

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





**76-1260**

IN THE  
**United States Court of Appeals**  
**For the Second Circuit**

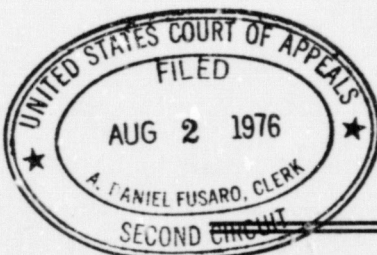
No. 76-1260

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*  
*against*  
SEYMOUR ROSENWASSER,  
*Defendant-Appellant.*

B  
p/s

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

**DEFENDANT-APPELLANT'S APPENDIX**



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DOCKET ENTRIES

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
-----X  
THE UNITED STATES,

vs.

No. 75 CR 278 Platt, J.

GERALD ALLICINO and  
SEYMOUR ROSENWASSER,

Defendants.

-----X

Proceedings

4- 8-75	Before Weinstein, J. - Indictment filed. Bench Warrant Ordered for deft. Allicino - Bench Warrant Issued.
4-16-75	Before Platt, J. - Case called - Adj. to 4/25/75 at 9:30 A.M. Bail set at \$5,000.00 P.R. Bond (ALLICINO).
5- 7-75	Bench Warrant retd. and filed - executed.
5-25-75	Before Platt, J. - Case called - Defts. and counsel present - Defts. arraigned and each deft. enters a plea of not guilty - case adj. to 5/23/75 - bail set at \$5,000.00 P.R. Bond as to each deft.
5-25-75	Notices of appearances filed (BOTH DEFTS.)
5-23-75	Before Platt, J. - Case called - defts. and counsel present - Case adj. to 6/6/75 at 11:30 A.M. for all motions.
5-28-75	Govts. Notice of Readiness for Trial filed.



6- 3-75 Notice of Motion filed & Memorandum of Law, ret. June 6, 1975 for Discovery and Bill of Particulars (ALLICINO)

6- 3-75 Notice of Motion filed for Bill of Particulars, and suppressing evidence, etc. (ret. June 6, 1975 Deft. Rosenwasser)

6- 5-75 Govts. affidavit filed in opposition to defts. motion for Bill of Particulars (deft ALLICINO); Govts' affidavit in response to motion for Particulars (ROSENWASSER); Govts' Memorandum of Law filed (sic) in opposition to defts. motion to suppress (ROSENWASSER).

6- 6-75 Before Platt, J. - Case called - Motions argued - granted and denied as indicated on the record - case set down for 6/20/75 at 11:00 A.M. - to set trial date.

6-20-75 Before Platt, J. - Memorandum and Order filed denying deft. Rosenwasser's motion for bill of particulars and discovery.

10- 3-75 Before Platt, J. - Case called - Defts. and counsel present - case adjd. to 10/14/75 at 9:30 A.M. for trial.

10-14-75 Before Platt, J. - Case called - Defts and counsel present - case adjd. to 11/17/75 at 9:30 A.M.

11-21-75 Before Platt, J. - Case called - Deft. Allicano (sic) and counsel present - adjd. to Jan. 5, 1975 for trial.

1- 5-76 Before Platt, J. - Case called - defts & couns. ls present - adjd. to Jan. 23, 1976.

1-23-76 Before Platt, J. - Case called - defts. not present - adjd. to 2-2-76.

2- 3-76 Notice of Motion filed, for dismissal of the indictment as to deft Allicano (sic), etc. (forwarded to chambers to set date).

2- 3-76 By Platt, J. - Opinion and Order filed - If the Govt is to be required to furnish a list of its witnesses and their addresses, the defts should be required to do the same, etc. Any exchange of names and addresses of witnesses shall occur not later than three days before commencement of the trial of this action.

2- 9-76 Affidavit in opposition to defts motion to dismiss the indictment (ALLICINO).

2-13-76 Before Platt, J. - Case called - deft and counsel present - motion to dismiss argued - decision reserved - deft to submit papers (ALLICINO).

2-18-76 Before PLATT, J. - Case called - deft Rosenwasser & atty. Arnold Wallack present - Pre-Trial Conference held and concluded.

2-20-76 Before Platt, J. - Case called - adjd. to 2/24/76 for trial at 2:00 P.M.

2-24-76 Before Platt, J. - Case called - trial ordered and begun - jurors selected and sworn - trial contd. to Feb. 25, 1976.

2-25-76 Before Platt, J. - Case called - trial resumed - deft. Rosenwasser moves for a severance - motion denied - Hearing on disqualification of Juror #1 Morris Greifinger - Juror #1 is excused - hearing concluded - Deft. ALLICANO (sic) motion for mistrial - denied - Trial contd. to 2-26-76.

2-26-76 Before Platt, J. - Case called - trial resumed - Defts. motion for a mistrial is denied. Deft ALLICANO's (sic) motion to dismiss is denied - deft. Rosenwasser's motion for a Judgment of Acquittal is denied - Deft. Allicino rests - trial contd. to 3-1-76.



3- 1-76 Before Platt, J. - Case called - Trial resumed - Defts motion for a mistrial is denied - Deft ALLICANO's (sic) motion for a Judgment of Acquittal is denied - deft Allicino rests - trial contd to 3-1-76.

3- 2-76 Before Platt, J. - Case called - trial resumed - trial contd to 3-3-75. (sic)

3- 2-76 By Platt, J. - Order of sustenance filed (Luncheon - 17 persons)

3- 3-76 Before Platt, J. - Case called - lefts & attys present - trial resumed - Jury resumes deliberations - Order of sustenance signed - jury returns with a verdict of guilty on counts 1 and 2 as to deft ALLICINO and guilty on count 1 as to deft ROSENWASSER. Jury polled and discharged - trial concluded - defts to renew all motions at time of sentencing - bail contd - sentences adjd without date.

3- 3-76 By Platt, J. - Order of sustenance filed (lunch - 14 persons)

4-27-76 Defts Allicino's sentence memorandum filed.

5-20-76 Before Platt, J. - Case called - deft ALLICANO (sic) & counsel Gustave Newman present - Deft sentenced on count 1 to imprisonment for 3 years on condition that he be confined in a jail type institution for 6 months and execution of remainder of the sentence is suspended and deft is placed on probation for 3 years and to pay a fine of \$2500; on count 2 deft is sentenced to 3 years imprisonment - to serve 6 months and remainder of sentence is suspended and deft is placed on 3 years probation - count 2 to run concurrently with count 1. On count 2 deft is to pay a fine of \$2500 for a total of \$5,000 in fines - bail contd and execution of fines stayed during period of appeal.



5-20-76 Judgment and commitment and order of probation filed - certified copies to Marshal & Probation (ALLICANO) (sic)

5-20-76 Notice of appeal filed (ALLICANO)

5-20-76 Docket entries and duplicate of Notice mailed to the Court of Appeals (ALLICANO).

5-21-76 Before Platt, J. - Case called - deft. and counsel present - deft renews all motions previously made - motions denied - deft ROSENWASSER sentenced on count 1 to imprisonment for a period of 2 years and deft shall become eligible for parole under T-18, U.S.C. Sec. 4205(b)(2) at such time as the Board of Parole may determine and the defendant shall pay a fine of \$5,000.000 - bail contd. pending appeal.

5-21-76 Judgment and Commitment filed - certified copies to Marshal.

5-24-76 Notice of appeal filed (ROSENWASSER).

5-24-76 Docket entries and duplice of Notice mailed to the Court of Appeals (ROSENWASSER).

6-10-76 Order received from court of appeals that record be docketed on or before 6/29/76.

6-11-76 By Platt, J. - Order on stipulation withdrawing appeal filed (ALLICINO).

6-28-76 3 stenographers transcripts filed (One dated Feb. 25, one dated Feb. 26 and one dated Mar. 3, 1976.

A TRUE COPY ATTEST

6/29/76

LEWIS ORGEL, CLERK  
/s/ ROSE SMITH, DEPUTY CLERK

INDICTMENT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

-against-

No. 75 CR 278

GERALD ALLICINO and SEYMOUR  
ROSENWASSER,

Defendants.

-----X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 6th day of March 1972, within the Eastern District of New York, the defendants GERALD ALLICINO and SEYMOUR ROSENWASSER did wilfully and unlawfully receive and have in their possession a quantity of women's knitted garments, having a value in excess of One Hundred Dollars (\$100.00), which goods had been stolen on or about March 3, 1972 from a motortruck belonging to the Arline Knitwear Company, Brooklyn, New York, while moving as a part of and constituting an interstate shipment of freight from New York to New Jersey, the defendants GERALD ALLICINO and SEYMOUR ROSENWASSER knowing the same to have been stolen. (Title 18, United States Code, Sections 659 and 2)



COUNT TWO

On or about and between the 3rd day of March 1972 and the 6th day of March 1972, both dates being approximate and inclusive, within the Eastern District of New York, the defendant GERALD ALLICINO and the defendant SEYMOUR ROSENWASSER, along with others known and unknown to the Grand Jury, did knowingly and wilfully conspire to commit an offense against the United States, in violation of Title 18, United States Code, Section 659, by conspiring to knowingly and wilfully receive and have in their possession a quantity of women's knitted garments having a value in excess of One Hundred Dollars (\$100.00), which garments had been stolen on or about March 3, 1972 from a motortruck belonging to Arline Knitwear Company, Brooklyn, New York, while they were moving as and constituting an interstate shipment of freight from New York to New Jersey, the defendants GERALD ALLICINO and SEYMOUR ROSENWASSER knowing them to have been stolen.

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant GERALD ALLICINO and the defendant SEYMOUR ROSENWASSER committed, among others the following:

O V E R T   A C T

1. On or about March 6, 1972, within the Eastern District of New York, the defendant GERALD ALLICINO and the defendant SEYMOUR ROSENWASSER met in Brooklyn, New York.  
(Title 18, United States Code, Section 371)

A TRUE BILL

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Foreman

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UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK



1  
2 THE CLERK: The United States of America vs. Gerald  
3 Allicino and Seymour Rosenwasser.

4 MR. WALLACH: Your Honor, I don't want to be  
5 troublesome. We made an objection and moved for  
6 a severance because of the subsequent acts attributed  
7 to the other defendant, do I have to renew that when  
8 he opens to the jury and refers to it or could the  
9 record show that we brought it to your attention?

10 THE COURT: I wish at the end of the opening  
11 just jog me before one of you opens to call to the  
12 jury's attention that the prosecutor refers to similar  
13 acts, that he refers only to the defendant Mr.  
14 Allicino and does not refer to Mr. Rosenwasser, if  
15 and when proof is required in that event.

16 MR. NEWMAN: While I'm at it, Judge, my present  
17 contemplation, I don't know what I'll do after Mr.  
18 Epstein opens and indicates that my client plead to  
19 a misdemeanor in connection with that charge.

20 THE COURT: That's up to you. You could do it  
21 assuming you are going to put a subpoena in.

22 MR. LEVIN-EPSTEIN: I'll stipulate to it.

23 MR. NEWMAN: Thanks.

24 MR. LEVIN-EPSTEIN: May I ask one question? Mr.  
25 Rosenwasser is represented by two attorneys at this

1 R I C H A R D K . R E D M A N , having first been duly  
2 sworn by the Clerk of the Court, was examined and  
3 testified as follows:

4 THE CLERK: State your name for the record,  
5 please.

6 THE WITNESS: Richard K. Redman, R-e-d-m-a-n.

7 DIRECT EXAMINATION

8 BY MR. LEVIN-EPSTEIN:

9 Q For the record once again, sir, would you state  
10 your full name so that the jurors in the back of the box can  
11 hear it.

12 A My name is Richard K. Redman, R-e-d-m-a-n.

13 Q What is your occupation, sir?

14 A Special agent with the Federal Bureau of  
15 Investigation.

16 Q How long have you been so employed?

17 A Over seven years.

18 Q What is your current duty assignment?

19 A My current assignment is to the fugitive squad  
20 in the New York City area.

21 Q Prior to your assignment, were you assigned to  
22 another squad?

23 A Yes.

24 Q What squad was that?

25 A That was the hijacking squad or also known as



33 Redman-direct

the theft from interstate shipment squad.

Q Now, would you briefly describe what your duties were and are as an FBI agent. First of all, briefly what your duties were when you were assigned to the hijacking squad?

A Yes. At that time I was assigned to investigate matters dealing with the theft of shipments traveling in interstate commerce.

(Continued next page.)

34 Redman-direct

BY MR. LEVIN-EPSTEIN:

Q Directing your attention to March 3rd, 1972, did there come a time on that day when you were assigned to begin investigation into the armed hijacking of a truck belonging to the Arlene Knitwear Company in Brooklyn?

A Yes.

Q Did you become what is commonly called the case agent in this case?

A Yes, I was.

Q Would you briefly tell us your duties as a case agent?

A A case agent is the agent for the overall investigation. He may have other agents also working in the case, and most circumstances does. He is assigned to do the administrative paper on it, and is responsible in general.

Q He is the primary investigator involved in the case then?

A Yes.

Q Directing your attention to March 7th, 1972, were you working on that day?

A Yes.

Q Were you working in your official capacity as case agent on the Arlene Knitwear Company?

A Yes.



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Redman-direct

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Q Part of your duties that day -- did there come a time when you went someplace relating to this case?

A Yes.

Q Will you tell the jury, please, where it was that you went?

A On that morning, as I recall, approximately a little after 9:00 o'clock in the morning, I went to Pier 48 on the Hudson River in New York City, which was also located at the intersection of Bank and West Street.

Q Now, moving off to another topic for just one question, Agent Redman, during your last six and a half or seven years in the FBI, how many of those years were in the New York City area?

A Going on six.

Q During the course of the last six years, did there ever come a time when you became familiar with a location which was formerly known as the Federal Detention Headquarters?

A Yes.

Q What was the Federal Detention Headquarters?

A It was the institution where federal prisoners were incarcerated.

Q What was the address of the old headquarters?

A It's located on one of the corners at Bank and

West Streets in Manhattan.

Q With respect to Pier 48 where you said you went on that morning, where is the old jail?

A Across the street on the opposite corner.

Q When you arrived in the vicinity of the jail at West Street and Bank Street that morning, what, if anything, did you do?

A I made a recovery of a truck.

Q Can you describe the truck that you recovered for the jury?

A Yes. It was a 1970 International, straight truck with a red cab, silver boxed, New York license plates, and it had the markings, Arlene Knitwear on the doors of the cab.

Q Did you ultimately identify this truck as being related to the Arlene hijacking?

A I did.

Q How was it related?

A It was the truck that had been hijacked on March 3rd, 1972.

MR. LEVIN-EPSTEIN: Your Honor, I ask that these photographs be marked next exhibit for the Government for identification in sequence.

MR. NEWMAN: I have no objection.



1 37  
2 R. LEVIN-EPSTEIN: I ask they be marked in  
3 evidence then.

4 THE CLERK: Four photographs as 19-A, 19-B,  
5 19-C and 19-D received in evidence.

6 (So marked.)

7 Q While the clerk is marking those photographs,  
8 Agent Redman, on that morning, did there come a time when you  
9 examined this recovered truck?

10 A Yes. On the morning of March 7th.

11 Q When you examined the truck, did you have  
12 occasion to examine the cargo area of the truck?

13 A Yes, sir.

14 Q What, if anything, did you notice about the door  
15 to the cargo area?

16 A The door had been forced open.

17 Q Based upon your experience and training in the  
18 FBI, can you formulate an opinion as to what manner the door  
19 was forced open?

20 A Yes. I would say the tool was put into the  
21 crack of the door and had the door sprung.

22 Q From your examination of the truck, did you  
23 notice any alarm device of any kind?

24 A I noticed the remains of an alarm device, yes,  
25 sir.

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Q Would you elaborate, please?

A The alarm device was ripped out, and part of the remains were placed in the cargo section of the box of the truck.

Q What is the box, by the way?

A That is the rear cargo area of the truck as opposed to the cab where the driver sits, individual, separate part of the truck.

Q Did there come a time when you examined that cab area of the truck? Sir, did you examine the cab area of the truck?

A I did.

Q Did you examine the interior of the truck?

A Yes.

Q Did you examine the dashboard, the area of the dashboard of the truck?

A Yes.

Q What, if anything, did you notice about the dashboard area that was unusual?

Brackets where apparently a piece of equipment was, and that was no longer there.

Q Where was these brackets situated on the dashboard?

A Located underneath the part of the dashboard.



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Q Did you obtain other forensic or scientific --  
did you examine for fingerprints?

A Yes.

Q Did you obtain what you thought were fingerprints?

A I obtained some latent --

Q Would you explain to the jury what a latent  
fingerprint is.

A It is an unidentified fingerprint.

Q You don't know whom it belongs to?

A That's right.

Q When you received a report from the FBI  
laboratory as to the possible identification of these latent  
fingerprints --

A Yes.

Q What results were obtained?

A No identification was effected. Not enough of  
the identifying points were obtained.

Q What is an identifying point?

A The particular characteristics of the  
fingerprint.

Q Did there come a time when during the course of  
your examination any sort of photographic equipment was used?

A Yes.

Q By whom?

40

Reuman-direct

- 1  
2 A By me, sir.  
3 Q Did you take some pictures?  
4 A I do.  
5 Q I show you Government's 19-A through D in  
6 evidence and ask if you recognize those four photographs  
7 (handing to witness)?  
8 A Yes, I do.  
9 Q Are these the photographs that you took on that  
10 day?  
11 A Yes, they are.  
12 Q Or some of them?  
13 A Yes.  
14 Q Is that a fair and accurate portrayal of parts  
15 of the truck as it appeared on that day?  
16 A Yes.  
17 Q Did there come a time when --  
18 Directing your attention to 19-B in evidence,  
19 to this particular picture. Could you tell the Court and  
20 jury what is depicted there?  
21 A Yes. This particular portion is the Babaco  
22 alarm system of the truck.  
23 Q In what condition does it appear in this truck?  
24 A The lid on the alarm system is hanging down and  
25 shows the alarm system remains.

41

Redman-direct

Q Directing your attention to the photograph which has been marked 19-A in evidence. Can you tell the jury what is depicted in that photograph?

A Yes. This is the rear cargo area of the straight truck in which the portion of the alarm system was lined.

(Continued next page.)



1 42  
2 Q Did there come a time when you or other agents  
3 of the FBI in your presence attempted to start the truck, that  
4 you recall?

5 A No.

6 Q It didn't happen or you don't recall?

7 A Not that the agent had tried anything.

8 Q Did someone else try in your presence?

9 A Yes.

10 Q Would you tell the jury who?

11 A The driver, Luther Washington, who worked for  
12 Arlene Knitwear Company.

13 Q Was he able to start the truck?

14 A No.

15 Q Do you know where the wires were?

16 A The wires had been torn out.

17 MR. LEVIN-EPSTEIN: One moment, your Honor.

18 Q Now, directing your attention, Agent Redman,  
19 to the seven cartons on the table here, Government's Exhibits  
20 12, 13, 14, 15, 16, 17 and 18 in Evidence, do you recognize  
21 those cartons and their contents?

22 A Yes, I do.

23 Q Have you ever seen them before?

24 A Yes.

25 Q Can you tell the jury, please, when the first



43

Redman-direct

time was that you ever saw these cartons and their contents?

A When I made a recovery at the address in Brooklyn.

Q What address was that?

A 152 Barbey Street.

Q What is "a recovery," as you use the word?

A As I use the word, it is the finding, recovery of goods that had been reported stolen.

Q Agent Redman, who lived and in fact still lives at 152 Barbey Street?

A Solomon Braverman and his wife and Wallace Cascio and his wife.

MR. LEVIN-EPSTEIN: Your Honor, at this time I would submit to the Court that the connection has been made.

THE COURT: Yes.

MR. NEWMAN: I renew my objection, Judge. That's all.

THE COURT: All right. Objection overruled.

MR. PELUSO: Same objection.

Q Now, in your capacity as case officer, Agent Redman, directing your attention to March 14, 1975, when you met with the defendant, Seymour Rosenwasser --

A Yes.

Q Was that meeting part of your official investi-

1 44 Redman-direct

2 gation?

3 A Yes.

4 Q Would you tell the jury, please, where you met

5 with him?

6 A At the factory located at 2395 Pacific Street.

7 Q Where is that?

8 A In Brooklyn, New York.

9 Q Did you have a conversation with him?

10 A Yes.

11 MR. LEVIN-EPSTEIN: I have no further questions.

12 CROSS-EXAMINATION

13 BY MR. NEWMAN:

14 Q Good afternoon, Agent Redman.

15 A Good afternoon.

16 Q As you know, I am Mr. Newman and I represent

17 Mr. Allicino. You were asked something by Mr. Levin-Epstein

18 using the language, "a recovery."

19 MR.LEVIN-EPSTEIN: Objection. That was the word

20 used by the agent.

21 MR. NEWMAN: I am sorry.

22 Q You used the word recovery.

23 A Yes, I do.

24 Q In referring to these packages or these boxes?

25 A Yes.



1 45 Q Where did this recovery take place, sir?

2 A The recovery took place of all of those on  
3 two separate occasions.  
4

5 Q When was the first of those?

6 A Right at that moment. I don't recall the  
7 specific date. 1974.

8 Q Do you remember a month in 1974?

9 A Like I said, it was two different occasions.  
10 I believe one was, to the best of my recollection, June, and  
11 the other in July, I think.

12 Q Would it refresh your recollection if I would  
13 suggest March of 1974, sir?

14 A Possibly. If I could see my administrative  
15 papers on it, I would be able to refresh my recollection.

16 MR. NEWMAN: Can we have those?

17 (Handing to Mr. Newman.)

18 Q This is 35000 material we were furnished by  
19 the Government. Does that refresh your recollection as to  
20 when the first of those records were made (handing to witness)?

21 A Yes.

22 Q And what was the date of the first recovery,  
23 sir?

24 A As I stated there, it was in June.

25 Q And the second recovery, sir?

46

Redman-cross/Newman

A As I stated, in July.

Q And, sir, were these recoveries made as a result of what you call a search of the premises at Barbey Street?

A Yes.

Q Now, sir, in June or July of 1974, did you search any premises at Jamaica Avenue or Herkimer Street seeking any material from the Arlene Knitwear?

A No, sir.

Q Sir, in either June or July of 1974 at Pacific Street in Brooklyn, where you were seeking any of the merchandise from the Arlene Knitwear Company?

A No.

MR. NEWMAN: No further questions of this gentleman.

CROSS-EXAMINATION

BY MR. PELUSO:

Q Agent Redman, you stated that you went to the factory at Pacific Street; is that right? 2395 Pacific Street?

A Yes.

Q And --

MR. NEWMAN: What are we talking about, Judge, 1975?

Q March 14, 1975; is that right, sir?



47

Redman-cross/Peluso

A Yes.

Q And you had a conversation with Mr. Rosenwasser;  
is that right, sir?

A Yes.

Q And did you ask him whether or not he knew  
anything about stolen merchandise ever being in his place  
of business?

MR. LEVIN-EPSTEIN: Objection.

THE COURT: Sustained.

MR. PELUSO: Judge, may we approach the side  
bar?

THE COURT: Yes.

(Whereupon, a side bar was held as follows):

MR. WALLACH: Can I speak, your Honor?

THE COURT: Yes.

MR. WALLACH: Your Honor, the last question as  
I recollect of the prosecutor was, "Did you have a  
conversation with Mr. Rosenwasser?" That was it. He  
never asked him what he said. That can leave an  
impression with the jury that the defendant said some-  
thing, may have availed himself with the Fifth Amendment  
or something about consciousness of guilt.

THE COURT: No such information was elicited.

MR. WALLACH: That's just the point, that all the

1 agent said -- he never asked him what he said. I  
2 submit that would leave the impression with the jury --

3 THE COURT: You can't put your defense in through  
4 the agent.

5 MR. WALLACH: I don't have to accept it.

6 MR. PELUSO: My objection is based on hearsay.  
7 I thought the door was opened by that question.

8 MR. WALLACH: That is another point. He opened  
9 the door by the question.

10 THE COURT: I don't think so.

11 MR. PELUSO: Ask him what, if anything, he said  
12 to the defendant. The sole purpose, as I understand,  
13 of that question, was to eliminate any question as to  
14 the whereabouts of the factory. That you fellows raised  
15 during the course of your cross-examination of Fleischer,  
16 and to establish a location of Pacific Street as his  
17 current testimony showed. He went further and asked  
18 him, "Did you have a conversation?"

19 THE COURT: Yes.

20 MR. LEVIN-EPSTEIN: If it needs elaboration,  
21 your Honor, I would be happy to.

22 THE COURT: No. I won't let you put your defense--

23 MR. LEVIN-EPSTEIN: Any statement that would be  
24 elicited from Agent Redman as to any comment, statement  
25



1 49

Redman-cross/Peluso

2 made by Mr. Rosenwasser at that time, would not come  
3 under the hearsay rule.

4 MR. WALLACH: Judge, that's how certain we are.

5 Can we inquire of this agent the description  
6 of the layout of the factory, the area?

7 THE COURT: Yes.

8 MR. WALLACH: Thank you, your Honor.

9 (Whereupon, the side bar was concluded and the  
10 following transpired in open court.)

11 BY MR. PELUSO (Continuing):

12 Q Agent Redman, on the date that you went to  
13 Pacific Street, you went by vehicle, I assume?

14 A I went on two occasions, both times by vehicle,  
15 yes.

16 Q Now, can you tell us whether or not Pacific  
17 Street is a one or two-way street?

18 A As I recall, it's a one-way street.

19 Q Would you describe where on Pacific Street the  
20 factory in question is located?

21 A Yes. If you are heading in a westerly direction  
22 going west, it is on the right-hand side of the street.

23 Q Would all of the buildings on both sides of  
24 Pacific Street in that area be factories?

25 A As I recall, I don't think so.

1 50

Redman-cross/Peluso

2 Q And at the very next corner, going westerly,  
3 at the intersection of Pacific and Sackett Street, is there  
4 a big Roman Catholic church?

5 A I don't recall.

6 Q Can you describe the inside, sir, of the factory?

7 A To the best of my recollection, as you get --  
8 walk in the front door, the business door of it, there's an  
9 office. If you walk across the width of the room, located  
10 on the far wall to the right is the area of the factory where  
11 the work is done. There are long tables, a lot of equipment  
12 hanging, there is a wooden floor. That is all I recall.

13 Q As you get off the elevator looking directly  
14 in front of you, you say there is an office?

15 A Small office area, yes, sir.

16 Q And is there also a cutting table there?

17 A There are tables. I don't recall if they are  
18 cutting tables or not.

19 Q Did you see any sewing machines in the place?

20 A I remember a lot of equipment. I don't recall  
21 if there were sewing machines or not.

22 Q Did you see people working in the place?

23 A On one occasion, at least, I saw many people  
24 working in the place, yes, sir.

25 Q Can you tell us what they were doing?



51

Redman-cross/Peluso

A I can't remember specific jobs they were doing. They were busy working on the tables.

Q Can you tell us whether or not there was sewing on any tables?

A I can't specifically recall sewing, but I remember there was a lot of sound, and it may possibly have been the sound of sewing machines.

Q Now, you are telling us that you don't remember what you actually saw?

MR. LEVIN-EPSTEIN: Object to the way the question was asked; the phrasing.

THE COURT: I will sustain the objection. I think that's what he's saying. Anyway, that's a question for the jury to determine.

Q You don't remember whether or not people were actually sewing at the tables?

A I don't specifically recall, no.

MR. PELUSO: I have no further questions.

MR. LEVIN-EPSTEIN: I have no redirect.

THE COURT: Wait a second, Mr. Wallach.

MR. PELUSO: I have no further questions.

MR. LEVIN-EPSTEIN: I have no further questions, your Honor.

THE COURT: All right. You may step down.

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MR. LEVIN-EPSTEIN: Your Honor, the Government

3

calls as its next witness, Ernest Haridopolos.

4

ERNEST A. HARIDOPOLOS, having first been

5

duly sworn by a Clerk of this Court, was examined and

6

testified as follows:

7

THE CLERK: State your name for the record,

8

please.

9

THE WITNESS: My name is Ernest A. Haridopolos,

10

H-a-r-i-d-o-p-o-l-o-s.

11

DIRECT EXAMINATION

12

BY MR. LEVIN-EPSTEIN:

13

Q Speaking loudly enough, s-r, so the jurors in

14

the end of the box can hear you clearly, can you tell us once  
again what your full name is?

15

16

A Ernest A. Haridopolos.

17

Q Mr. Haridopolos, are you employed?

18

A Yes. I am a Special Agent with the Federal

19

Bureau of Investigation.

20

Q Agent Haridopolos, how long have you been an

21

agent?

22

A Twelve years.

23

Q Are you currently assigned to a particular

24

location?

25

A I'm currently assigned to the New York office.



1 54

2 Q Are you currently assigned there?

3 A Yes.

4 Q What is that section?

5 A Organized Crime Section.

6 Q How long have you been with the Organized Crime  
7 Section?

8 A The past four years.

9 Q What section were you assigned to prior to  
10 that?

11 A Yes.

12 Q What was that?

13 A Theft from Interstate Shipment, specifically  
14 truck hijackings and truck violations.15 Q Directing your attention to March 1972, were you  
16 assigned to the truck hijacking squad?

17 A Yes, I was.

18 Q Directing your attention to March 28, 1972,  
19 were you officially involved and assigned to a particular  
20 investigation that day?

21 A Yes, I was.

22 Q What investigation was that, sir?

23 A A few days, I believe, the day earlier, there  
24 was a theft of Dewer's Scotch and some bourbon from trucks.

25 Q What kind of bourbon, by the way?

55

Haridopolos-direct

1 A Wild Turkey Bourbon.

2 Q Would you briefly describe what your official  
3 duties were with respect to that investigation?

4 A My specific duties that day were as a  
5 surveillance agent.

6 Q What is basically a surveillance agent's duties?  
7 What is his role?

8 A Make observations and report our observations  
9 and gather evidence.

10 Q And on that day, were you working by yourself  
11 or with other agents of the FBI?

12 A I was working with other agents of the FBI.

13 Q With whom were you working, sir, if you recall?

14 A Gary Delora, Tom Armstrong -- however, that  
15 particular day I was in an automobile by myself.

16 Q I see. Well, specifically directing your  
17 attention to that day, were you on a surveillance mission or  
18 assignment?

19 A Yes, I was.

20 Q Approximately what time did you begin your  
21 surveillance, sir?

22 A At approximately 4:00 p.m.

23 Q Where was that surveillance initiated?

24 A It was in Brooklyn, New York, and as far as I  
25



4 1 56

Haridopolos-direct

2 was concerned, initiated on Powell Avenue in Brooklyn, New  
3 York.

4 Q What was the subject of your observations?

5 A To make observations of a specific truck.

6 Q Can you describe that truck to the jury?

7 A Blue step-type van truck.

8 Q What is a step van truck type?

9 What does it look like?

10 A It's about eight feet long, six feet wide, like  
11 a dock's type truck where cargo is carried in the back area,  
12 back doors, and regular panel, and driver door.

13 Q And the color of it again was what?

14 A Was blue.

15 Q When fir the first time -- did there come a  
16 time when you first saw the blue van which was the subject of  
17 your surveillance?

18 A Yes.

19 Q WAs it occupied?

20 A Yes.

21 Q Can you describe the occupant to the jury?

22 A Two white males at the truck when I first  
23 arrived.

24 Q Do you see either of those two white males?  
25 Look around the courtroom.

5 1 57

Haridopolos-direct

2 A Yes, sir. The individual next to counsel  
3 Newman, Gerald Allicino.

4 MR. LEVIN-EPSTEIN: Indicating the defendant,  
5 Allicino.

6 MR. NEWMAN: So indicated.

7 THE COURT: Ladies and gentlemen, you remember  
8 after the opening statement I cautioned you that a  
9 portion of the Government's evidence would be on-  
10 admissible against Mr. Allicino, and this apparently  
11 pertains to that portion of the evidence, and  
12 secondly, that it would only be introduced for the  
13 purpose of showing knowledge or intent in the commis-  
14 sion of the crime charged in the indictment, and for  
15 that purpose only. I will give you four instructions  
16 on the law in this question in my charge. But, bear  
17 in mind this does not go to prove the crime charged in  
18 the indictment. It only, if you find the facts with  
19 respect to this portion of the case to be established,  
20 it only goes in on the question of knowledge and intent.  
21 It doesn't go in as proof to establish the crime  
22 charged in the indictment, in and of itself.

23 MR. LEVIN-EPSTEIN: May I proceed?

24 THE COURT: Yes.

25 MR. LEVIN-EPSTEIN: Thank you.



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Q On that day when you were surveilling this truck, where were you when you first saw the truck?

A I was in the FBI car just off Powell Avenue, one of the cross streets.

Q What did you see then? What, if anything, did the truck do?

A The truck proceeded north on Powell Avenue, and I proceeded to follow it.

Q Where did it go?

A It eventually stopped at Pacific Street; 2395 Pacific Street.

Q I beg your pardon? 2395?

A Yes. 2395.

Q Who was driving the truck?

A An individual named Angelo Delucca.

Q Did you know that at the time or did you learn that at a later time?

A Later time.

Q Mr. Allicino was a passenger of the truck?

A Yes, he was.

Q What happened after the truck approached the vicinity of 2395 Pacific Street?

A The truck stopped along the curb just past this address, and Delucca and Allicino left the truck and went

1 into this building.

2 Q What happened then?

3 A They returned to the truck in a few minutes.  
4 Delucca backed the truck onto the sidewalk so that the doors  
5 corresponded with the doors of this building, under the  
6 direction of Allicino.

7 Q This was something that you were observing as  
8 it was happening?

9 A Yes.

10 Q Then what happened?

11 A I was observing this about a hundred feet away.  
12 I subsequently left the vehicle I was in, walked up towards  
13 this door and truck, observed Allicino and Delucca unloading  
14 the cartons of Dewer's Scotch from this truck.

15 Q What happened then?

16 A I returned to my vehicle, reported what I saw,  
17 and subsequently, Agent John Goode and myself went back to  
18 where the truck was. By this time, Allicino and Delucca had  
19 left this address. Delucca was driving the truck, and  
20 Allicino was directing the truck into traffic on Pacific  
21 Street when he stopped the truck and we identified ourselves.  
22 I identified myself to Allicino, and Goode identified himself  
23 to Delucca, and we advised them that they were both under  
24 arrest.



1 60

Haridopolos-direct

2 Q Did you advise them of the charge?

3 A Advised them of the charge that they were under  
4 arrest for the charge of theft from interstate shipment.

5 Q Now, after Mr. Allicino was placed under arrest  
6 by you, where, if any place, did you go at that point?

7 A We went back to the doorway of this loft, this  
8 building that they had just exited, and proceeded to advise  
9 him of his rights and asked him some questions and searched  
10 him.

11 Q Did there come a time when you observed anything  
12 within that area of the building?

13 A Yes. Subsequently observed approximately fifty  
14 cases of Dewar's Scotch in a little room just inside the  
15 doorway of this building.

16 Q Did there come a time later after this day when  
17 the source or origins of the Scotch which you saw were  
18 identified? Where did that stuff come from?

19 A It came from a truck theft.

20 Q Is this the same truck theft that your previous  
21 testimony referred to?

22 A Yes, it is.

23 MR. LEVIN-EPSTEIN: Your Honor, I am going to ask  
24 that these eight photographs be marked Government's  
25 next exhibits in sequence for identification unless

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Haridopolos-direct

there is no objection to them being offered in evidence.

MR. NEWMAN: No objection.

MR. WALLACH: We object.

THE COURT: They are only in regard to Mr. Allicino. The jury is quite intelligent and understands.

MR. LEVIN-EPSTEIN: Marked in evidence then.

Q While the clerk is marking these photographs, AGent Haridopolos, on that day -- by the way, you mentioned before that when you went back to your car you reported what you had seen. By what means did you report it?

A Car radio.

Q To whom were you reporting?

A Other agents in the area that were under surveillance that day.

Q Following the arrest of Mr. Allicino that day, were these cases of liquor disclosed?

A Yes.

Q During the course of the continuing investigation, was any of photography performed or pictures taken by anybody?

A By -- who was?

Q Do you know who took the pictures?

A No, I don't know.



1 62

Haridopolos-direct

2 Q Have you had occasion during the course of your  
3 investigation, and, in fact, preparation for this trial, to  
4 observe and review those photographs, or some of them?

5 A Yes, I did.

6 Q Did you look at them before in my office, before  
7 you came down here, just before?

8 A Yes, I did.

9 MR. LEVIN-EPSTEIN: One moment, your Honor.

10 THE CLERK: Series of photographs marked in  
11 evidence as Government's Exhibits 20A to 20H inclusive.

12 MR. LEVIN-EPSTEIN: Your Honor, if it please the  
13 Court, without objection from counsel, I will staple  
14 these altogether.

15 (No response.)

16 Q Agent Haridopolos, I show to you what has been  
17 marked Government's 20A through H, inclusive, and I ask you if  
18 those are the photographs to which you just referred?

19 (Handing to witness.)

20 A Yes, they are.

21 Q Specifically directing your attention to  
22 Exhibit 20G, I indicate and point your attention to the building  
23 that appears in that photograph. Can you identify that  
24 building?

25 A Yes. That is the building that Allicino and

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62a

Haridopolos-direct

Delucca went into.

(Continued next page.)



- 2 Q Is that 2395 Pacific Street?
- 3 A Yes.
- 4 Q Does there appear to be a blue step van?
- 5 A Yes.
- 6 Q Is that the truck you were surveilling?
- 7 A Yes.
- 8 Q I call your attention to Exhibit 20-F in
- 9 Evidence, and I ask you if that is a different view of the
- 10 same building?
- 11 A Yes, it is.
- 12 Q Is that a closer up view of the doorway?
- 13 A Yes.
- 14 Q When you went through that doorway -- did there
- 15 come a time when you observed an elevator?
- 16 A Yes, there was.
- 17 Q Do you know who was operating that elevator?
- 18 A Yes. There was an individual named Anthony
- 19 Allicino.
- 20 Q Did there come a time when you learned that
- 21 Gerald Allicino and Anthony Allicino were related in any way?
- 22 A Yes. They were brothers.
- 23 Q Directing your attention to the rest of these
- 24 photographs, would it be fair to say they also reflect the
- 25 building and the truck?

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A Yes.

Q And also the stolen whisky?

A Yes.

MR. LEVIN-EPSTEIN: I have no further questions  
of this witness.

CROSS-EXAMINATION

BY MR. NEWMAN:

Q Good afternoon, Mr. Haridopolas. Just a couple  
of questions.

You said that Mr. Allicino directed the truck into the  
building. Did you mean that he showed them how to back up  
the truck?

A Yes.

Q And you say he directed to see that the traffic  
stopped on Pacific Street and it was safe to come out?

A Yes.

Q Now, you talked about a gentleman you learned  
to be the brother of Gerald Allicino, Anthony.

A Yes.

Q Did you arrest him that day, yes or no?

A He was arrested, sir.

Q Did there come a time that you learned that he  
passed away as a result of a heart attack?

A Yes.



1  
2 MR. NEWMAN: Thank you very much. Good to  
3 see you again.

4 MR. LEVIN-EPSTEIN: I am going to object.

5 MR. NEWMAN: I am sorry. It wasn't good to see  
6 him.

7 MR. LEVIN-EPSTEIN: I would have stipulated it  
8 was good to see him on Mr. Newman's part.

9 THE COURT: Mr. Newman has been around a long  
10 time and knows everybody.

11 CROSS-EXAMINATION

12 BY MR. PELUSO:

13 Q Mr. Haridopolas --

14 MR. LEVIN-EPSTEIN: Your Honor, may we approach  
15 the side bar. I am going to object before even one  
16 question is asked. May we approach the side bar?

17 THE COURT: Yes.

18 (Whereupon a side bar discussion was held.)

19 MR. LEVIN-EPSTEIN: I am objecting to any cross-  
20 examination by the defendant Rosenwasser and ask that  
21 the jury be instructed that none of this evidence comes  
22 in against him.

23 MR. PELUSO: Well, Judge, pictures were admitted  
24 into evidence, and there is definitely a spillover as  
25 to my client.

I think I should at least be allowed to point out where the place is located. Also, we have had very ambiguous language that was brought out.

THE COURT: What is the church?

MR. PELUSO: That is part of the description of the area.

THE COURT: That's different.

MR. PELUSO: In addition to that language being ambiguous as to the address at 2395 Pacific Street, now the impression can be --

THE COURT: No. It's not admitted against him.

MR. PELUSO: I think I should make it clear to the jury.

THE COURT: I have made it clear to the jury. You can call him as your own witness. You can instruct him to remain and put him on the witness stand, if you wish.

MR. WALLACH: May we just have a moment, Judge.

THE COURT: Yes.

(Whereupon, an off-the-record conversation was held.)

THE COURT: I am assuming, Mr. Levin-Epstein is going to be resting momentarily.

MR. LEVIN-EPSTEIN: I will say this, your Honor,



5 1  
2 that the Government will take the position that if  
3 Mr. Peluso cross-examines this witness or, in fact,  
4 calls him as his own witness, the door will be opened  
5 wide for any inquiry that I might want to make, with  
6 respect to any knowledge he may have about anything  
7 that the defendant Rosenwasser --

8 MR. WALLACH: I guess we will leave the door  
9 shut.

10 THE COURT: It's up to you.

11 MR. PELUSO: Judge, am I going to be allowed  
12 to examine on those exhibits that were in evidence?

13 THE COURT: You will be allowed.

14 MR. PELUSO: Thank you. I will abide by your  
15 Honor's ruling, and I will not examine, subject to  
16 your Honor's rule.

17 (Whereupon, the following took place before the  
18 jury):

19 MR. PELUSO: In view of your Honor's ruling,  
20 I have no further questions of this witness.

21 MR. LEVIN-EPSTEIN: The Government has no further  
22 questions of this witness.

23 Your Honor, counsel joins me in a request for  
24 a short colloquy with the Court.

25 THE COURT: All right. We will take a short

stand.

SEYMOUR ROSENWASSER, having been first  
duly sworn by the Clerk of the Court, was examined  
and testified as follows:

DIRECT EXAMINATION

BY MR. PELUSO:

Q How old are you, sir?

A Fifty-six.

Q Are you married or single?

A Married.

Q How many years have you been married?

A Thirty-seven.

Q Do you have a family?

A Yes.

Q Would you tell us how many children you have?

A One girl, one boy.

Q How old is your boy?

A Thirty.

Q How old is your girl?

A Thirty-five.

Q What does your boy do for a living?

A He's a writer.

Q What does your girl do?

A Housewife.



Rosenwasser-direct/Peluso

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Q Have you ever been convicted of a crime, sir?

A No.

Q What type of work do you do?

A I'm in ladies jackets and coats.

Q Where do you live?

A 5421 Glenwood Road.

Q What is the name of your firm?

A Trecon Sportswear.

Q Where is that located?

A 2395 Pacific Street.

Q How long has it been at that location?

A Close to 30 years.

Q Have you ever had a factory at Hegeman Street?

A No.

Q Is Trecon Sportswear privately owned, partnership  
or a corporation?

A A corporation.

Q And who owns stock in that corporation?

A Seymour Rosenwasser.

Q You are the sole stockholder?

A Yes.

Q Do you see the gentleman in court, Mr. Allicino?

A Yes.

Q Is he or has he ever been your partner?

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A No.

Q Either in your manufacturing business or in any other business?

A No.

Q You say you have been in the coat business for 35 years?

A Yes.

Q Before that, what if anything did you do?

A During the War I was a welder.

Q And where did you work?

A In the shipyards.

Q How long did you do that?

A From the beginning of the War until the end of the War.

Q Have you ever belonged to a hijacking crew or a mob?

A No.

Q Have you ever owned or carried a gun?

A No.

Q Have you ever racked up any proceeds from a hijacking, in crime?

A No.

Q Have you ever conned anyone in your life?

A No.



Rosenwasser-direct/Peluso

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Q Have you ever received a quantity of women's knitted garments which were stolen from a motor truck, stolen from Arlene Knitwear?

A No.

Q Have you ever received any stolen garments at all?

A No.

Q Have you ever possessed any knitwear which was stolen from Arlene Knitwear?

A No.

Q Have you ever possessed any stolen women's garments at all?

A No.

Q Have you ever purchased any women's knitwear which was stolen from Arlene Knitwear?

A No.

Q Have you ever purchased any stolen women's garments at all?

A No.

Q Have you ever conspired or agreed with Gerald Allicino to commit an armed offense against the United States?

A No.

Q Have you ever conspired or agreed with Gerald Allicino or any other person or persons to purchase any stolen

1  
2 women's garments?

3 A No.

4 Q Have you ever conspired or agreed with Gerald  
5 Allicino or any other person or persons to receive any stolen  
6 women's garments?

7 A No, no, no.

8 Q Have you ever conspired or agreed with Allicino  
9 or any other person or persons to possess stolen women's  
10 garments?

11 A No.

12 Q On March 6, 1972, did you know Mr. Allicino?

13 A Yes.

14 Q How long did you know Mr. Allicino?

15 A About 25 years.

16 Q Did you know his family?

17 A Yes.

18 Q Did you know his brother?

19 A Yes.

20 Q What was his brother's name?

21 A Tony.

22 Q Did Tony work for you, sir?

23 A No.

24 Q What type of work did Tony do?

25 A Tony was an elevator operator, and I think he



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took care of the building.

Q The building where your factory is located,  
do you own or rent?

A I rent.

Q You rent the entire building, sir?

A No.

Q How much space do you rent in that building?

A I rent one loft consisting of I think about  
5,000 square feet.

Q On March 6, 1972, were you the only tenant in  
that building?

A No.

Q What if anything was your relationship with  
Mr. Allicino on March 6, 1972?

A Friends.

Q Do you know where he lives?

A Yes.

Q Tell us where he lives.

A Across the street from the factory.

Q Can you describe the block Pacific Street on  
which your factory is located?

A One-way street; on the corner is a big church,  
right next to my building is the rectory; across from the  
rectory is a big church, across the street from my building

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is all residence.

Q Was it the same way on March 6th, 1972?

A It's been that way for the last 35 years, that I know.

Q What floor in 2395 Pacific Street is your loft located?

A First floor.

Q How do you get to your office or your factory?

A I walk up the steps.

Q Is there also an elevator that goes to your factory?

A Yes.

Q Can you describe where that elevator is located in the building?

A We have two entrances, one is 2395 Pacific Street; one is 2401 Pacific Street, and between the two entrances there is an elevator. The elevator takes care of both parts of the building.

Q You say it takes care of both sides of the building. Explain that to the jury.

A Well, when the elevator should go up to my floor, on the side, that's 2395 Pacific Street. On 2401 there is also a door that the elevator leads to the other side of the building and it goes up all the way to the top.



MR. PELUSO: May I have these marked for Identification?

THE COURT: Mark them.

MR. LEVIN-EPSTEIN: Mark them in evidence.

MR. PELUSO: I'll offer them in evidence.

THE COURT: All right.

THE CLERK: Twenty-eight photos received in Evidence as Defendant's Exhibit A-1 to 28.

MR. PELUSO: Would your Honor want me to continue?

THE COURT: If you can go on, it would be helpful.

BY MR. PELUSO:

Q On March 6, 1972, or on March 7, 1972, did you know or meet the gentleman who testified here in court, Paul Fleischer?

A Never saw him in my life.

Q On March 6, 1972, or March 7, 1972, did you know or meet a man by the name of Gerald Collins, who is also known as Rebel?

A I don't know.

Q On March 6, 1972, did you know or meet a man by the name of Paul Flammia, also known as Porkchop?

A I don't know these people.

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Q On March 6 or 7, 1972, did you know or meet a man by the name of Joseph Alloria, also known as Baldy?

A No.

Q On March 7 or 7, 1972, did you know or meet a man by the name of Rocco Mastrangelo?

A No.

Q On March 6th, 1972 or March 7, 1972, did you know or meet a man by the name of Charlie Peters, who was also known as Fat Charlie?

A I don't know any of these people.

Q Did you ever in your life have an argument with any of these people?

A I never knew them. I never had no argument.

Q Mr. Rosenwasser, what time do you report to work in the morning?

A 6:30.

Q What time do you leave your factory?

A About a quarter of four, 4:30.

Q Between 6:30 in the morning and the time you leave in the afternoon, what, if anything, do you do at the factory?

A I prepare the work for the operators.

Q Explain to the jury what that means.

A I take Fannie Extract, who puts in the sleeves,



1  
2 I would give her like a jacket like you are wearing, a body,  
3 back, she would put the sleeves into that jacket; another  
4 operator I would give that pocket that that gentleman is  
5 wearing, I would give another operator that pocket to put in;  
6 that gentleman wearing that green jacket, I would give another  
7 operator a back to make two pants, two parts of a back; whatthat  
8 young lady's wearing, I would give an operator a front to make  
9 and so on and so forth, all around the factory, and naturally  
10 I would watch that the work is done.

11 Q Do you do any other work aside from what you  
12 just described?

13 A Yes, I sit on the machine and work also.

14 Q Who does the cutting in your place of business?

15 A My place of business, there is no cutting. We  
16 get work all cut, trimmed, and we assemble it and put it  
17 together.

18 Q Do you know what a cutting table is?

19 A Yes.

20 Q Describe a cutting table for the jury.

21 A A cutting table would be from here to about  
22 here and about 50 inches, the width.

23 Q When you say --

24 A From the end of the wall to about here (indicat-  
25 ing).

Rosenwasser-direct/Peluso

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Q To the front of the witness stand?

A About 50 or 62 inches is the width. It would be two rollers on the cutting table, where they roll goods up and that, and there would be a long line where they have the cutting machine, long electrical line where it just slides through; that would be a cutting table.

Q Do you have a cutting table in your place of business?

A No.

Q On March 6 or 7, 1972, did you have a cutting table?

A My place is too small.

Q Did you have a cutting table on March 6 or 7, 1972?

A Never had a cutting table.

Q Can you describe your factory, if you were standing at the entrance to the factory coming off the elevator, what would you see?

A As you come off the elevator your eyes would focus right into the office; on the side of the office you would see a few machines; as you would turn to the right you would see girls by the table cleaning all the garments.

Q When you say a few machines, what type of machines would you see?



1  
2 A You would see blind stitch machine; you would  
3 see a sewing machine, and that's what you would see.

4 Q How many sewing machines do you have your place  
5 of business on March 6 and 7 of 1972?

6 A 24 -- about 24 sewing machines and about 6  
7 special button sewing, blind stitch -- that's a special  
8 machine.

9 Q About how many sewing machine operators did you  
10 have working on March 6th and 7th of 1972?

11 A About 20, 22.

12 Q And were they working sewing during the morning  
13 hours of March 6, 1972?

14 A They come in the morning, they sew all day long.

15 Q Your work is piece workers or time workers?

16 A The operators are piece workers; the floor  
17 workers are time workers.

18 Q Would you explain to the jury the difference  
19 between a piece worker and a time worker?

20 A The time worker works by the hour; a piece  
21 worker, whatever they make, they earn. In other words, if a  
22 girl puts in 100 pairs of sleeves a day, she gets paid for  
23 100 pairs of sleeves a day. Where a time worker will clean  
24 a jacket, punch a card in the morning and at night and she'll  
25 punch a card at 12, 12:30, when she starts back. She gets

1  
2 paid hourly; a piece worker doesn't get paid hourly.

3 Q Now, the sewing machines that you had in your  
4 place of business on March 6th and 7th, are those the same  
5 sewing machines that are there today?

6 A Yes.

7 Q And on March 6th and 7th of 1972, when those  
8 machines were in operation, were they noiseless or did they  
9 make noise?

10 A They make noise.

11 Q By the way, how many coathangers do you have  
12 that hang from your ceiling in your place of business?

13 A We don't have any coathangers hanging from the  
14 ceiling.

15 Q On March 6, 1972?

16 A We don't have any, we never did.

17 (Continued on next page.)  
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Rosenwasser-direct

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Q How many pressing machines do you have in your place of business?

A About six.

Q How many did you have on March 6, 1972?

A Same amount.

Q How many pressers, operators, do you employ for these machines?

A One, two.

Q On March 6, 1972, did you employ any operators for the pressing machines?

A It's a very coincidental time, for the simple reason at that time we had to be working on what we call wet look. A wet look coat doesn't consist of any pressing whatsoever. I think these young ladies they know what they are.

MR. LEVIN-EPSTEIN: I'll object to that. I assume the answer is no.

THE COURT: Strike it out.

Q During the period, the month of March 1972, how many men were delivering merchandise at your place of business?

MR. LEVIN-EPSTEIN: Objection, leading question.

THE COURT: I'll allow it.

A The same men that come in every day.

MR. LEVIN-EPSTEIN: Objection.

THE COURT: Sustained, strike it out. Answer the

2

Rosenwasser-direct

question. How many men were making deliveries to your plant on March 6, 1972? One, two, three, fifteen, twenty, twenty five?

THE WITNESS: I'm sorry; three, three or four.

Q During say the past ten years, how many men were making deliveries and pickups at your place of business?

MR. LEVIN-EPSTEIN: Objection, irrelevant.

THE COURT: Sustained.

Q Has anyone ever made a pickup or delivery other than the men you testified about earlier?

A I didn't hear you.

Q Has anyone made a delivery of merchandise or boxes to your place of business other than the three or four men about which you have testified earlier?

A No.

Q Did Mr. Fleischer on March 6 or 7, 1972 or at any time make any deliveries to your place of business?

A I told you I don't know the man. I never saw the man before in my life.

Q Did any of the others that he mentioned Mastangelo?

A I don't know any.

Q Charlie Peters make any deliveries to your place of business on March 6, or 7, 1972?



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A I never saw them, never heard of them.

Q Did they make deliveries to your place of business?

A No.

Q Did they pick up any cartons or boxes on the 7th from your place of business?

A No.

Q On March 6th or 7th 1972, did anyone in your place of business tell you or say in your presence, "I'll kill that Jew if he doesn't take the load" or words to that effect?

A No.

MR. PELUSO: May I approach the witness?

THE COURT: Yes.

Q (continuing) I show you what has been marked in evidence as Defendant's Exhibit A1 to 28 and I ask you if --

Did you cause those pictures to be taken, sir?

A Yes.

Q When were those pictures taken?

A Saturday.

Q Were you present when they were taken?

A Yes.

Q Were those pictures -- please look at them. Are those pictures a fair and accurate representation of your factory?

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A Yes.

Q And the block, Pacific Street, the block where your factory is located as of March 6 and 7, 1972?

A Yes.

Q Mr. Rosenwasser, are there any windows in your factory?

A Yes.

Q Tell the jury approximately how many windows there are in your factory?

A Approximately there are 22 to 23 windows.

Q And where are they located, sir?

A Well, I would say wherever all the operators are, all around the front, all around the side of the building, that's where all the operators sit, in the front.

Q I show you what's been offered and accepted as Government's Exhibit 20 in evidence.

(Witness looking at photograph.)

THE COURT: The gentleman in the rear seat who has his hat on, please take it off.

Q Mr. Rosenwasser, after looking at Government's Exhibit 20 in evidence, I direct your attention specifically to the picture which shows some cases of liquor.

Is that a picture of your loft?

A No.



1  
2 Q Can you tell us where at premises 2395 Pacific  
3 Street that picture was taken, if you know, sir?

4 A I don't see anything. All I see is boxes.

5 Q Are you familiar with the area in the vicinity  
6 of the elevator at 2395 Pacific Street?

7 A Yes.

8 Q Now, is that area used solely and exclusively by  
9 you or do you use that with the other tenants in the building?

10 A I use that with the other tenants in the building.

11 Q Directing your attention to the picture which  
12 shows the boxes of liquor --

13 A Yes.

14 Q Would that be a fair and accurate representation  
15 of the area, the area in the vicinity of the elevator?

16 A I don't see no elevator. All I see is boxes.

17 Q Is it your testimony, sir, with regard to that  
18 picture you don't know where that picture was taken?

19 A This picture could be taken anyplace.

20 Q Is there anything about that picture that you  
21 recognize -- I'm talking about the top picture?

22 A This picture?

23 Q Yes.

24 A All I see is boxes. I see nothing else.

25 Q Do you recognize any of the other boxes in that

group of Government Exhibit 20, sir?

A Yes, I do.

Q Would you show me which pictures in that group you recognize?

A This is the picture that we are in.

Q That I take it is Government Exhibit 20G.

Do you recognize any other pictures?

A This is the elevator.

Q At Pacific Street?

A Right.

Q That I take it is 20F?

A This is the same picture as the elevator.

Q 20E?

A This I don't know; this is a truck.

Q Do you recognize --

A The top I recognize as the building that we rent; this is the opposite side of our building. This is not the factory.

Q That's 20D. Do you recognize 20C?

A This is our building.

Q Do you recognize 20C?

A This is our building.

Q Do you recognize 20B, sir?

A This could be any place -- and this could be



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any place.

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Q The two that you say could be any place, 20B and

4

20A could be any place, and I take it 20H.

5

Judge, I pass Defendant's Exhibit A1 through 28

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amongst the jurors.

7

THE COURT: Yes.

8

Q How long have you been at 2395 Pacific Street?

9

A I would say close to 30, 35 years.

10

Q Do you know how long that church and that rectory

11

which adjoins your building has been there?

12

A Longer than me. The rectory hasn't been longer

13

than me, the church has been.

14

MR. PELUSO: Judge, shall I wait or proceed?

15

THE COURT: Proceed.

16

Q You heard Mr. Fleisher testify about meeting you

17

at your place of business on March 6th?

18

A Yes.

19

Q And about Charlie Peters screaming, "I'll kill

20

that Jew" and I believe there was a curseword in there --

21

"If he doesn't take the load --

22

A I heard it.

23

Q Did that happen, sir?

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A No.

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Q Did you commit any of the acts about which

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Mr. Fleisher testifies that you committed on March 6th or 7th of 1972?

A I never committed a crime in my life.

MR. PELUSO: No further questions.

THE COURT: Mr. Newman, do you wish to ask any questions?

MR. NEWMAN: I have no questions.

MR. LEVIN-EPSTEIN: I have a few, your Honor.

CROSS-EXAMINATION

BY MR. LEVIN-EPSTEIN:

Q Good afternoon, Mr. Rosenwasser. There is no doubt, Mr. Rosenwasser, that on March 3rd, 1972 a truck belonging to Arlene Knitwear --

MR. PELUSO: I'll object to that.

THE COURT: I haven't heard a question, please.

MR. PELUSO: I anticipated.

THE COURT: If he knows it.

Q Is there any doubt in your mind, Mr. Rosenwasser, whether a truck belonging to the Arlene Knitwear Company was hijacked at point of gun on March 3rd, 1972?

A I don't know anything about it.

Q Did you hear Mr. Fleisher testify with respect to that hijacking?

A Yes.



1  
2 Q Is it your testimony that you don't know whether  
3 he was telling the truth about that or not?

4 A I don't know the man.

5 Q Is that your testimony?

6 A That's right.

7 Q You have never met Paul Fleisher before?

8 A No.

9 Q And you never had any contact with Paul Fleisher  
10 before?

11 A No.

12 Q And you have never heard the name Paul Fleisher  
13 before as it relates to this case?

14 A That is correct.

15 Q Based upon what you know, Mr. Rosenwasser, was  
16 Mr. Fleisher lying when he said the truck was hijacked?

17 MR. PELUSO: Objection.

18 THE COURT: I'll sustain that. He said he doesn't  
19 know anything about what he says.

20 Q There is no doubt that you are the tenant at  
21 2395 Pacific Street; right?

22 A Yes.

23 Q No doubt about that?

24 A Right.

25 Q And there is no doubt that the tenancy that you

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hold is a first floor loft; is that right?

A Yes.

Q There is no doubt about that?

A Yes.

Q And there is no doubt at that loft at 2395 Pacific Street you are in business; right?

A Yes.

Q And there is no doubt that in that business you manufacture ladies garments; is that right?

A I contract -- I contract, I'm not a manufacturer.

Q Can you answer my question yes or no?

A No.

Q You cannot answer my question yes or no?

A I don't understand the question.

Q Is it not a fact at 2395 Pacific Street during the course of your business, you assemble or manufacture ladies garments, yes or no?

A I assemble ladies garments.

Q Is there a difference between assemble and manufacturing as you use the term?

A Yes, there is.

Q But there is no doubt that you make a living by preparing ladies garments?

A Yes.



1                               Rosenwasser-cross/Levin-Epstein

2               Q           In some manner?

3               A           Yes.

4               Q           No doubt about that?

5               A           No.

6               Q           And there is no doubt in your business at 2395

7 Pacific Street the physical plant there contains an elevator?

8               A           Yes.

9               Q           You heard Mr. Fleisher testify about that didn't

10 you?

11              A           Go ahead; yes.

12              Q           Was he lying then?

13              A           He was never in that building. He lied all the

14 way through. He lied -- everything he said he was a liar.

15              Q           You are positive?

16              A           Yes.

17              Q           There is no doubt in your mind?

18              A           No doubt in my mind.

19              Q           When Mr. Washington testified that the truck was

20 rented on March 6 of 1972, was he lying about that?

21              A           I don't know who he is.

22                       MR. NEWMAN: Your Honor --

23              Q           My mistake. Mr. Fleisher. May the record be

24 clear. Was Mr. Fleisher lying about that truck?

25              A           Mr. Fleisher lied all through the testimony.

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Q He lied about that?

3

A I don't want to look at nothing. He lied at

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everything.

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Q And Mr. Fleisher said that a telephone call was

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made on March 3rd 1972 from Air Freight Haulage to New Jersey,

7

he was lying about that?

8

A I don't know anything about it.

9

Q When Mr. Fleisher testified that a return call

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was made from New Jersey to Air Freight Haulage in New York,

11

was he lying about that?

12

A I don't know anything about that.

13

MR. NEWMAN: I'll object to this. May we approach

14

the side bar?

15

THE COURT: I'll sustain it to the extent that

16

he doesn't know. Don't question him.

17

MR. NEWMAN: May I approach the side bar on

18

another issue having to do with those exhibits?

19

THE COURT: Yes, put the exhibits back on the

20

table. Be seated, gentlemen.

21

Q Mr. Fleisher testified as you come out of the

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elevator the first thing you see is the office. Was he lying

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about that?

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MR. PELUSO: Objection, sir.

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THE COURT: It's the jury's recollection what he



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testified to and what he didn't testify to.

Mr. Levin-Epstein, I'm not so sure that was the testimony but you may ask the question.

Q You may answer.

A I don't know what he said.

Q Were you sitting here?

A Yes.

Q Did you hear everything he said?

A I can't remember everything he said.

Q Do you recall Mr. Fleisher testifying that as you leave the elevator and look to the right you see the sewing machines?

A I don't know if he said he saw the sewing machines.

Q Approximately how many ladies garments either assembled or in the process of being assembled pass through your place of business, say the last one year?

MR. WALLACH: The crucial date.

THE COURT: In the year 1972.

Q In the year 1972, to the best of your recollection.

A I can't answer.

Q Would it be fair to say a thousand garments were in and out?

A More.

Q Five thousand.

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2 A Are you talking about the year? The whole year?  
3 Q The whole year.  
4 A Too hard to answer that.  
5 Q Would it be fair to say more than five thousand?  
6 A Yes.  
7 Q More than ten thousand?  
8 A Yes.  
9 Q More than a hundred thousand?  
10 A I can't answer.  
11 Q Is it more --  
12 A I can't answer. I can't remember. It's impossible  
13 to know.  
14 Q Would it be fair to say that many, many garments?  
15 A Yes.  
16 Q So some similar to these?  
17 A I don't work on that stuff.  
18 Q But similar to these?  
19 A Nothing like that.  
20 Q No resemblance?  
21 A No.  
22 Q Is it your testimony in 35 years of business you  
23 never put together or manufactured in your place of business  
24 a lady's top?  
25 A No.



1  
2 Q Is it your testimony that in those 35 years of  
3 business you never put together a blouse such as that marked  
4 Government's Exhibit 12A in evidence; that is your testimony?  
5 A I can't make that stuff.  
6 Q Now, in the 35 years or so that you have been in  
7 this business, how long did you say you had been at 2395  
8 Pacific Street?  
9 A About 35 years.  
10 Q Would it be fair to say the whole time you have  
11 been in the business has been at that location?  
12 A Yes.  
13 Q And you worked there regularly?  
14 A Yes.  
15 Q Everyday?  
16 A More or less.  
17 Q Every weekday more or less?  
18 A Yes.  
19 Q Take Saturdays and Sundays off?  
20 A Go ahead.  
21 Q Regular workday?  
22 A Yes.  
23 Q About 8:00 in the morning, 5:00 in the evening?  
24 A Go ahead.  
25 Q Is that correct, sir, yes or no?

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A Yes; unless we are slow. If we are slow, we

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are not working.

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Q There are occasions when you don't work?

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A Yes.

6

Q On March 6, 1972, there's no doubt that you were

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working on that day?

8

A We were working.

9

Q Were you working?

10

A I was working.

11

Q There is no doubt that you were working at that

12

location; right?

13

A Right.

14

Q And you were present there; right?

15

A Yes.

16

Q And you were supervising the operation; right?

17

A Yes.

18

Q Among other things supervision of the operators

19

themselves, the operators on the machines; is that correct?

20

A Yes.

21

Q Among other things, the supervision of deliveries

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that were made; is that correct?

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A Yes.

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Q Are you sure of that?

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A Yes.



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Q There is no doubt in your mind?

A No.

Q So if a delivery had been made who would have been responsible for supervising it, Mr. Rosenwasser ?

A Me.

Q How much noise do the sewing machines make as best you can describe that? Would it be fair to say -- Let me ask you this question -- can you answer that question?

A I can't tell you how much noise. I can't make the noise to tell you how much noise it makes.

Q Can you answer this question. If I were talking to you in the tone of voice I'm talking from the distance we are now talking, would the noise in the building going at a normal rate, would you have difficulty hearing me?

A No.

Q You wouldn't have any difficulty hearing me?

A No.

Q So it's not a lot of noise; is that a fair statement?

A Your voice happens to be very loud so the machines could be louder and your voice is very loud. I can hear you from anyplace.

Q Can you hear me now, Mr. Rosenwasser?

A You don't talk that way all the time.

Rosenwasser-cross/Levin-Epstein 89

1  
2 Q On the day of March 6, 1972 who was working in  
3 the shop, as best you can recall?

4 A Mostly all the operators, myself.

5 Q Anybody else?

6 A That's all; usual run of everyday work.

7 Q The question was, who else if anyone, was working.

8 A I'm telling you.

9 Q The answer is nobody else?

10 A I don't know what you mean "nobody else."

11 Q I'll try and rephrase my question.

12 ON March 6, 1972, besides yourself and as you  
13 describe it, the usual number of operators was there; anyone  
14 else working, sir?

15 A Floor help.

16 Q Floor help. Who is that?

17 A Like the woman that was here at first Vincenza  
18 Iannello.

19 Q And she's a cleaner?

20 A That's right. That's floor help.

21 Q Have you ever been in Mr. Allicino's home?

22 A No.

23 Q Never been in Mr. Allicino's home?

24 A No.

25 Q Right across the street from your factory?



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A No.

Q In 25 years you never walked across the street to his house?

MR. WALLACH: Excuse me. Objection. May I voice an objection, if your Honor wants a reason, it's asked and answered. I believe more than once.

THE COURT: Overruled. You may answer the question.

A Let me hear it again.

THE COURT: In 25 years you have never been across the street to his house?

THE WITNESS: I don't know what he means in the house, just to knock at the door or to go in and have coffee?

Q Has there ever come a time in 25 years that you have knocked on Mr. Allicino's door?

A Yes.

Q Did there ever come a time during those 25 years after knocking on the door you went through the door?

A Yes.

Q Would it be fair to say that you have visited at Mr. Allicino's home?

A The question is not put right. I don't know what

Rosenwasser-cross/Levin-Epstein 91

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2 you mean in his house. I can't explain it to you. In other  
3 words, one time I had to go away I asked him for a shirt, if  
4 that is what you mean going to his house -- one time I asked  
5 him to come out and help me fix a motor; is that what you mean,  
6 going in his house?

7 Q Mr. Allicino ever work for you?

8 A Yes.

9 Q In what capacity?

10 A A presser.

11 Q And how long did Mr. Allicino work for you as a  
12 presser?

13 A He worked about twenty some odd years ago, maybe  
14 for a year or two, I don't know.

15 Q Approximately when did he work?

16 A I told him about 20 years ago.

17 Q Would it be fair to say he worked approximately  
18 1956?

19 A I don't remember the year. I told you about 20  
20 years ago.

21 Q And that's 1956?

22 A Could be.

23 MR. LEVIN-EPSTEIN: I ask the Court to take  
24 judicial notice of the fact.

25 THE COURT: Yes.



1  
2 Q How long did Mr. Allicino work for you approxi-  
3 mately 20 years ago?

4 A Maybe about a year or so.

5 Q Is it possible that he worked for you into 1957?

6 A That's 20 years ago. I really can't give you a  
7 true description of how long he worked.

8 Q Is it possible Mr. Allicino worked for you in  
9 excess of one year?

10 A You are asking me the same question. I have to  
11 give you the same answer. I can't remember that far back, and  
12 I don't remember how long he worked for me at the time.

13 Q When was the last time Mr. Allicino worked for  
14 you?

15 A That was the last time.

16 Q 1956 or 1957; any doubts in your mind about those  
17 dates?

18 MR. WALLACH: Objection. The witness has  
19 answered this question and has --

20 THE COURT: I'll overrule the objection.

21 Q You may answer the question.

22 A What's the question?

23 Q Any doubt in your mind about the date on the last  
24 time Mr. Allicino worked for you?

25 A I told you the time he worked for me, after that

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I can't answer.

Q Isn't it a fact, Mr. Rosenwasser, that Mr. Allicino has worked for you on other occasions?

A No.

Q It's not a fact?

A No.

Q I beg your pardon. Finish your answer.

A He would help me.

Q When Mr. Allicino worked for you 20 years ago you paid him a salary?

A Yes.

Q How much did you pay him?

A I don't remember.

Q Did you pay him \$100 a day?

A I don't remember.

Q Did you pay him?

A I don't remember.

Q Did you pay him on a time basis or a piece basis?

A A time basis, I think.

Q On a time card?

A I don't remember. It's too far back.

Q So in fact, if he worked on a time basis there would be a record of his employment, wouldn't there, Mr. Rosenwasser?



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MR. WALLACH: Objection.

THE COURT: I'll allow it.

Would there be a record?

THE WITNESS: I wouldn't say that.

THE COURT: There is a record.

THE WITNESS: I would know when he would come  
and I would know when he would go.

Q How would you know that?

A Because I'm in the place all day long and I know  
when the man starts and when the man goes home.

Q Do you mean to tell this jury when someone worked  
on a time basis in your place of business, no record is kept?

A I didn't say that.

Q Is that your testimony?

A I didn't say that.

THE COURT: He said that's not his testimony.

Q Would it be fair to say in some cases that a  
time worker --

A You asked me about Gerald Allicino. I gave you  
the answer. Do you want to ask about somebody else. ask me.

Q Would it be fair to say in some cases of a time  
worker a record is kept and in some cases, a time worker, a  
record is not kept; is that a fair statement?

A No, I don't understand it.

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Q Isn't it a fact that with some of your employees they punch a timecard?

A I don't know what you mean by some.

Q Not all?

A Time workers?

Q Sir?

A Time workers punch a time clock.

Q Everyone of them?

A Yes.

Q Including Gerald Allicino; yes or no, if you can answer the question.

A Are you going back 20 years?

Q Yes, sir.

A I told you before Gerald Allicino didn't punch a timaclock.

Q Would you care to change your testimony at this time?

A No.

MR. PELUSO: I'll object to that.

THE COURT: I'll overrule it.

Q Would it be fair to say, Mr. Rosenwasser, that for the people that you employ who are on a time record, with the exception of Gerald Allicino, there is a time record?

A Yes.



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Q Everybody who works on a time basis except for your co-defendant, Gerald Allicino, you have a time record?

MR. NEWMAN: Objection to the form of the question.

MR. WALLACH: Objection.

THE COURT: That's a fair statement.

Q IS that a fair statement?

A Yes.

Q It is a fair statement?

A I didn't understand you.

Q I'll rephrase it.

Would it be fair to say then that every time worker that you employ there is a record with the exception of Gerald Allicino?

MR. NEWMAN: Judge, I object to the form of the question, it's stated in the present, "everyone you employ."

THE COURT: Employed, he said.

Q I beg your pardon -- have ever employed?

A At that particular time he didn't have a time card.

Q But you gave time cards to others?

A To everybody.

Q Except him?

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A At that particular time.

Q So there was no record of him having worked for you in 1956?

A And '57.

MR. NEWMAN: Objection to the form of the question.

It assumes that the only record he keeps --

THE COURT: He could answer.

Q Was there any other record that you kept that showed that Mr. Allicino worked for you at that time?

A Yes, he got paid.

Q Was there any other records was my question.

A I have my payroll.

Q And can you produce the payroll for 1956, '57?

A I don't know if I can find it.

Q Directing your attention to the time when Mr. Allicino did work for you, to the best of your recollection, how much money did you pay him?

MR. NEWMAN: Objection, irrelevant, 20 years ago.

THE COURT: Overruled.

A I don't remember.

Q Was it --

A I don't remember. Don't tell me 120, 30, 40, I don't remember.

Q Would it be fair to say that you paid him in



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excess of \$100 a week?

MR. WALLACH: I'll object to the prosecutor at this time -- to the Government prefacing every question practically all with, "would it be fair to say". This is inviting a debate. This is not a question of fairness.

THE COURT: There's nothing wrong with that form of the question. Overruled.

MR. WALLACH: I further object on the grounds that these questions had been asked and answered. I don't want to make a speech. They have been asked and answered, your Honor.

THE COURT: Go ahead, Mr. Levin-Epstein.

Q Read back the last question.

(Whereupon last question was read.)

A I don't remember.

Q Have you ever told anybody what you paid Mr.

Allicino?

MR. WALLACH: I'll object to that. May we step up?

THE COURT: Excluding your lawyers, have you told anybody?

Q My question was: in substance, have you ever told anybody outside this courtroom with the exception of

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your attorneys what you paid Mr. Allicino?

A I don't remember. You're going back 20 years.

Q At any time?

A I can't remember 20 years.

Q Can you remember ten years?

A Ask the question.

Q Did you ever tell anybody that -- withdrawn.

MR. WALLACH: Same objection. This is the same thing that I just objected to, your Honor.

THE COURT: I have no trouble with that question.

MR. WALLACH: Respectfully except.

Can we step up a second, your HOnor?

THE COURT: No.

Q Mr. Rosenwasser, have you ever told anybody on any other occasion that Mr. Allicino worked for you at a time other than 20 years ago?

A Repeat that. I don't understand that.

(Whereupon the question was reread.)

MR. WALLACH: Acknowledge my objection.

THE COURT: He said excluding your attorneys.

A All I can tell you he worked for me 20 years ago, he got paid. That's all I know.

Q That's the best of your recollection?

A Yes.



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Q And you never told anybody anything else?

MR. WALLACH: Objection on the grounds that  
silence has no probity..

THE COURT: You are overruled.

Did you ever tell anybody other than your attorneys  
that Mr. Allicino ever worked for you at any other time?

THE WITNESS: He didn't work for me at any other  
time.

(Continued on next page.)

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Rosenwasser - cross

Q There is no doubt in your mind as to that?

MR. WALLACH: Objection. This is repetitive.

THE COURT: No. I'll allow it.

Who was your landlord?

THE WITNESS: Buraldo.

THE COURT: Who are the principals?

THE WITNESS There are a few agents but they  
died.

THE COURT: Who was the principal in Buraldo  
Realty?

THE WITNESS: Right now?

THE COURT: Then.

MR. LEVIN-EPSTEIN: I would ask this document  
be marked Government's exhibit X in sequence for iden-  
tification.

THE CLERK: One document marked for identifica-  
tion as Government's exhibit 22.

Q Mr. Rosenwasser, have you ever been called upon  
to testify in a previous mater relating to Mr. Allicino?

A Yes.

Q At that time you testified, did you not, under  
oath?

A Yes.

Q And is that the proceeding where you testified



Rosenwasser - cross

THE COURT: All right, gentlemen, step up.

(Whereupon a side bar conference was held.)

MR. NEWMAN: I want to know where he's going with this.

THE COURT: I don't know. I assume you are going to object.

MR. LEVIN-EPSTEIN: What is the ground for the objection?

MR. NEWMAN: I was just anticipating where he's going. Is he going through the other motion to suppress?

MR. LEVIN-EPSTEIN: No.

MR. NEWMAN: I'll ask for an offer of proof.

MR. LEVIN-EPSTEIN: I'm offering this evidence to show the relationship between the defendants and to show that on prior occasions this witness has testified on his behalf under oath.

MR. NEWMAN: I have no problem with that. I don't know about my colleagues.

MR. WALLACH: He testified as a witness in the present hearing, this is no way within the realm of cross examination unless they are going to show his prior --

THE COURT: He testified to Mr. Allicino being employed by him over a number of years --

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MR. LEVIN-EPSTEIN: I'll make it very clear to  
the jury.

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MR. NEWMAN: Subpoenaed him. Testified as to  
the physical layout, the area where the

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THE COURT: Was this before me?

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MR. LEVIN-EPSTEIN: No, it was Judge Constantino  
in 1973.

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THE COURT: He testified in a prior hearing.

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If he said something inconsistent here --

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MR. LEVIN-EPSTEIN: To make it easy, I'll forego  
the whole line of questioning.

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MR. PELUSO: Do you have testimony that he  
testified differently. That's what I mean, he did this  
with the police officer.

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MR. LEVIN-EPSTEIN: Now, you have the witness on  
the stand and he could be redirected.

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THE COURT: At the moment all he's asking him is  
whether he ever told anybody that, anything different  
apart from you two gentlemen about his employment of  
Allicino.

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MR. PELUSO: I wouldn't allow the comment on that.

22

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MR. WALLACH: In regard to what you just said,  
I want to suggest to your Honor there is a United States  
Supreme Court case decided, I believe, last June, I  
forgot the name of it, where a defendant was arrested

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25



4 1 and charged with robbery, whatever it was; he was given  
2 his Miranda right and remained silent. He took the  
3 stand and testified as to an alibi, the Government said,  
4 "Did you ever tell this to a policeman" -- Supreme Court  
5 of the United States didn't go into constitutional law,  
6 it merely said matter of supervisory function of the  
7 Supreme Court, silence on prior occasions by a witness  
8 or an accused has no probity and it is not evidence.

9 MR. PELUSO: He wants to leave the stand to get  
10 a drink of water. I'll make one other request.

11 MR. LEVIN-EPSTEIN: I'm about to show that he  
12 has made a prior statement.

13 MR. PELUSO: That's what we are going to have?

14 MR. LEVIN-EPSTEIN: May I proceed, your Honor?

15 THE COURT: We have been here ten minutes keeping  
16 this jury.

17 MR. PELUSO: I think it's extremely relevant.

18 THE COURT: You have had your chance.

19 MR. PELUSO: This is on something that just came  
20 up.

21 We made a written demand on the use of any state-  
22 ments made by Mr. Rosenwasser, we never were served  
23 with this. This is the first time I have seen this  
24 statement.

25 MR. LEVIN-EPSTEIN: What Mr. Peluso is talking

51 about is a photostatic copy of a piece of letterhead or  
2 bill form entitled Statement Trecon Sportswear.

3 THE COURT: That's not the statement made by Mr.  
4 Rosenwasser, you know as well as I do.

5 MR. NEWMAN: Can I just say one thing?

6 THE COURT: No. Let's get going.

7 (Whereupon the side bar conference was concluded.)

8 CROSS EXAMINATION BY

9 MR. LEVIN-EPSTEIN CONTINUED:

10 Q Mr. Rosenwasser, isn't it a fact, sir, that on  
11 January 31 of 1972 you told somebody that Mr. Allicino had  
12 worked for you from 1957 right up through and including Jan-  
13 uary 31, 1972; isn't that a fact, sir?

14 MR. NEWMAN: Objection, Judge, as far as Allicino  
15 is concerned.

16 THE COURT: This is perfectly proper cross-exam-  
17 ination of this witness. If at some future time you  
18 have a legitimate objection as to Mr. Allicino, I don't  
19 see --

20 MR. NEWMAN: I'll renew my objection, your Honor.  
21 If you want a convenient time, I'll make my views known.

22 MR. WALLACH: May we see that?

23 Q Isn't that a fact?

24 A I told you before, I don't remember. Don't  
25 holler at me.



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Rosenwasser - cross

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THE COURT: You are here to answer questions,

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not run the court room.

4

The jury is excused. Don't discuss the case.

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(Whereupon the jurors were excused from the

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court room.)

7

THE COURT: Mr. Peluso: You take this witness

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out during the lunch hour and you explain to him you

9

don't talk back to the Court. If he does it again I'll

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hold him in contempt and you know where he'll spend the

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rest of the trial. We'll recess now for lunch until

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5 minutes past 2. The Clerk will tell the jury. Give

13

him those instructions.

14

(Whereupon lunch recess was had.)

15

(After lunch recess.)

16

MR. LEVIN-EPSTEIN: Read back the last question.

17

(Whereupon the last question was read.)

18

A I don't remember.

19

Q I show you what has been marked --

20

Would it refresh your recollection, sir, if you

21

were told that on January 31, 1972 you not only told --

22

Withdrawn.

23

You also told someone Mr. Allicino was paid by

24

you \$250 a week.

25

MR. WALLACH: Objection to the form of the ques-

tion.

THE COURT: Overruled.

A I wouldn't remember.

Q I direct your attention to Government's exhibit 22 marked for identification and I ask you to look at it, please.

A I wrote this.

Q Did you have an opportunity to examine Government's exhibit 22 for identification, sir?

A I wrote this.

Q Does that refresh your recollection as to whether or not on January 31, 1972 you ever told anyone that Mr. Allicino did work for you at that time?

A No.

Q That doesn't refresh your recollection?

A No.

Q I direct your attention to this portion where I am pointing on Government's exhibit 22 for identification and I ask you if that is your signature?

A Yes.

Q Did you write that signature there?

A Yes.

Q On the original of this document?

A I suppose so.

Q Did you write the text where I am pointing now



Rosenwasser - cross

in your handwriting on the original of this document?

A Where the original?

Q The question is, did you write it?

A I don't know, I can't remember, it's too far for me.

Q I direct your attention to the printed portion of the upper part of this document and I ask you if that's the letterhead of Trecon Sportswear, your business?

A Yes.

Q I direct your attention to the handwritten portion; is that your handwriting?

A No.

Q Is this your handwriting?

A No.

Q Is this your handwriting?

A Yes.

MR. LEVIN-EPSTEIN: I'll ask that this document be marked.

MR. PELUSO: May we approach the side bar?

THE COURT: Wait a minute.

MR. PELUSO: I'm sorry.

(Whereupon a side bar conference was held.)

THE COURT: What is your objection?

MR. PELUSO: If I understand the testimony cor-

9 1 rectly the witness said that his signature but not of  
2 the other handwriting on there is his.

3 THE COURT: Is that your objection?

4 MR. PELUSO: Is it being offered?

5 MR. NEWMAN: May I object?

6 THE COURT: Admitted only as against Mr. Rosen-  
7 wasser.

8 (Whereupon side bar conference was concluded.)

9 THE COURT: Document offered only against Mr.  
10 Rosenwasser.

11 THE CLERK: Government's exhibit 22 received in  
12 evidence.

13 Q Would it be fair to say that according to your  
14 testimony the only handwritten portion on this document now  
15 marked exhibit 22 in evidence is your signature, that's the  
16 only thing you wrote on there?

17 A Yes, sir.

18 Q The rest of it you didn't write?

19 A No.

20 Q When you signed your original, was the rest of  
21 this here?

22 A I don't remember 1972.

23 MR. LEVIN-EPSTEIN: Your Honor, may I read this  
24 to the jury?

25 THE COURT: You may.



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MR. LEVIN-EPSTIEN: It reads as follows:

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National City Bank, January 31, 1972. Gerald

3

Allicino has been in my employ since 1957 and is now

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earning a salary of \$250 a week. Thank you. Signed

5

Seymour Rosenwasser.

6

Q Mr. Rosenwasser, was Mr. Allicino working for you

7

in 1972?

8

A Last time I told you when he was working for me.

9

That was the last time that he was working for me.

10

Q Is this statement on Government's exhibit 22,

11

Mr. Rosenwasser, a stated fact?

12

A What was that?

13

Q Is this a true statement, what is written on

14

here, that Mr. Allicino had been in your employ since 1967

15

and earning a salary of two fifty a week; is that true, yes or

16

no?

17

A Read it again.

18

Q Dated January 31, 1972, "National City Bank.

19

Gerald Allicino has been in my employ since 1967 and is now

20

earning a salary of \$250 per week. Thank you. And signed

21

Seymour Rosenwasser.

22

A He was working for me in 19- when?

23

Q The document -- Well, you can see for yourself

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it is dated January 31, 1972.

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A He worked for me the year I told you. He didn't

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Rosenwasser - cross

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work for me in '72.

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Q In other words, that is an inaccurate or false

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statement, sir?

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A I don't know, I don't think so.

6

Q I beg your pardon?

7

A I don't think so.

8

Q You don't think it's a true statement?

9

A Right.

10

Q But you signed it, didn't you?

11

A I can't remember, it's too far gone. This is

12

my handwriting; yes.

13

Q Do you know the circumstances under which that

14

note was written?

15

A I can't remember.

16

Q Would it refresh your recollection if I told you

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that note was written as part of a loan transaction?

18

A I'll have to take your word for it.

19

Q Would it refresh your recollection if I told you

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that note was written as part of a loan transaction?

21

A I told you I would have to take your word for it.

22

I can't remember 1972. I have other problems beside that.

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Q Do you recall 1957?

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A I don't recall 1957.

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Q Did you testify on cross-examination before lunch



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Rosenwasser - cross

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that you recalled that Mr. Allicino worked for you in 1957, sir?

A Yes.

Q So you do recall that much about 1957?

A Yes.

Q Do you recall when Mr. Allicino worked for you in 1957, according to your testimony on cross-examination this morning, Mr. Allicino did not punch a time card?

A Yes.

Q Do you remember that much about 1957?

A I may have been mistaken. He may have punched a time card.

Q Is your recollection now refreshed as to whether Mr. Allicino punched a time card?

A I don't remember but it's possible that he did punch a time card.

Q Do you wish to change your testimony?

A I am only telling you the facts as of the years I can remember which I can.

Q Did you write this note at Mr. Allicino's request?

MR. NEWMAN: Objection, if your Honor please.

THE COURT: overruled.

MR. NEWMAN: There is no testimony that he wrote the note.

THE COURT: Overruled.

Q I'll rephrase the question.

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Rosenwasser - cross

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Did you sign this note at Mr. Allicino's request?

3

A I signed it but I don't know anything about his

4

request.

5

Q I beg your pardon?

6

A I signed it. It's my signature there, but I

7

don't remember why I signed it or the reasons for signing it.

8

Q Do you remember the circumstances?

9

A I don't remember.

10

Q Would it refresh your recollection if I told you

11

this note was part of a loan transaction in which you were

12

called upon to vouch for Mr. Allicino's employment?

13

MR. NEWMAN: Objection.

14

MR. WALLACH: I also object, your Honor.

15

THE COURT: I'll allow it.

16

Does that refresh your recollection?

17

THE WITNESS: No, I told him I can't remember

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that far back. I don't know the reason for it. It's

19

my signature on there. I agreed to that, but I don't

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know, why, how, where or when. It's too far for me

21

to remember.

22

Q Mr. Rosenwasser, is it your testimony as you sit

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here before this jury that you have a better recollection of

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twenty years ago than you have of four years ago?

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MR. NEWMAN: Objection to the form of the ques-



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Rosenwasser - cross

tion. Argumentative.

THE COURT: Overruled.

Q Is that your testimony?

A Well, sometimes something --

Q Can you answer the question yes or no?

A I'm answering it if you'll let me answer it.

THE COURT: Is your recollection better four years ago?

THE WITNESS: I would like to answer it if he gives me a chance.

THE COURT: Is your recollection better twenty years ago?

THE WITNESS: I can't answer on a yes or no basis.

Q Would you need to explain your answer?

A Yes.

Q Go ahead, Mr. Rosenwasser, explain.

A Thank you very much. I imagine in everybody's mind --

MR. LEVIN-EPSTEIN: Objection, it's unresponsive. I'm asking you to explain.

A I'm explaining it to the best of my ability, give me a chance to explain it. I'll explain it the best I can. If you interrupt me, I can't answer it. I imagine in every-

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Rosenwasser - cross

2 body's lifetime there's always something that sticks in every-  
3 body's mind, your Honor's mind, this one, that one, everybody  
4 always remembers something; at that point in time, Joe Alli-  
5 cino's family came to me and asked me to give him a job.

6 Q Which time is that, Mr. Rosenwasser?

7 THE COURT: You're talking about that time, 1957,  
8 is that what you are talking about?

9 THE WITNESS: Yes. That's the time I told his  
10 family I would give him a job and do the best I can for  
11 him, and that's the reason why I remember that partic-  
12 ular time. Now, if a different incident were to come  
13 up I probably would remember; in everybody's lifetime  
14 there always comes a time where something sticks in  
15 their mind.

16 Q Did anything happen in 1972 with respect to  
17 Mr. Allicino that "sticks in your mind?"

18 A Yes.

19 Q What?

20 MR. NEWMAN: :Objection. May I have a side bar?

21 THE COURT: I'll sustain the objection.

22 Q Is one of the things, Mr. Rosenwasser, that  
23 sticks in your mind that on March 6, 1972 Mr. Allicino and  
24 others delivered to your place of business a quantity of  
25 stolen goods?



16 1

Rosenwasser - cross

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2 A I went through that and I told you, no.

3 Q That's not one of --

4 A I did tell you, no, no. I said nobody ever --  
5 Nothing ever came to my place.

6 Q In other words, that's not one of the things  
7 that sticks in my mind?

8 A It can't stick in my mind because it never hap-  
9 ped.

10 Q Is one of the things that sticks in your mind  
11 that on the morning of March 7, 1972 a group of men including  
12 Paul Fleischer came and unloaded the stuff in your place of  
13 business? Does that stick in your mind?

14 A It never happened. It can't stick in my mind.

15 Q Is one of the things that happened in 1972 on  
16 January 31st of 1972, Mr. Rosenwasser, the fact that you lied  
17 to the First National City Bank on behalf of the defendant  
18 Gerald Allicino, sir?

19 MR. WALLACH: I think the record should note the  
20 Prosecutor's manner of asking that question.

21 THE COURT: Overruled.

22 MR. NEWMAN: I object to the form of the question  
23 on behalf of Gerald Allicino there is no such evidence.

24 THE COURT: Overruled.

25 Q Answer the question.

17 1

Rosenwasser - cross

2

THE COURT: Read it back.

3

(Questeion reread.)

4

A I never spoke to anybody in National City Bank

5

so naturally I couldn't lie to them.

6

MR. LEVIN-EPSTEIN: Your Honor, I would ask that

7

this portfolio document be marked as the Government

8

exhibit next in sequence for identification.

9

THE CLERK: One file marked for identification

10

as Government's exhibit 23.

11

Q Mr. Rosenwasser, I show you what has been marked

12

Government's exhibit 23 for identification and I'll ask you if

13

you would look at it, please, and tell the jury if you recog-

14

nize it.

15

A Yes, I recognize it.

16

Q Are documents such as these kept in the ordinary

17

course of business of the Trecon Sportswear Company?

18

A Yes.

19

Q Were these documents, Government's exhibit 23

20

for identification, kept, prepared and maintained in the

21

course of business of Trecon Sportswear?

22

A Yes.

23

Q What are these documents?

24

A Payroll.

25

MR. LEVIN-EPSTEIN: Offer it in evidence.



18 1

Rosenwasser - cross

2

MR. PELUSO: No objection.

3

MR. NEWMAN: May I see them? I have never seen

4

them.

5

MR. WALLACH: Your Honor, may we take a look at

6

them?

7

THECOURT: Of course.

8

MR. NEWMAN: I object on the ground of connection

9

insofar as Allicino is concerned.

10

THECOURT: Let me see it.

11

MR. WALLACH: I also object on the ground that

12

this subject matter, the evidentiary aspect of this has

13

already been covered.

14

THE COURT: Step up, gentlemen.

15

(Whereupon a side bar converence was held.)

16

MR. LEVIN-EPSTEIN: If the Court please, I make

17

an offer of proof.

18

THE COURT: This doesn't have January '72 except

19

the last week.

20

MR. LEVIN-EPSTEIN: That's correct and that's the

21

portion I'm interested in.

22

THE COURT: Just that one page?

23

MR. LEVIN-EPSTEIN: Yes.

24

THE COURT: His name isn't on here.

25

MR. LEVIN-EPSTEIN: That's exactly the point.

1 THE COURT: What is your objection?

2 MR. NEWMAN: My objection is that it has no  
3 connection with Allicino. If your Honor wants to give  
4 a precautionary instruction.

5 MR. WALLACH: My objection, as I said, is this  
6 is overdoing it. I think now the jury got the point,  
7 the Prosecutor made his point, just to put that in will  
8 outweigh the prejudice.

9 THE COURT: Mark that one page, it's only January.

10 MR. LEVIN-EPSTEIN: The only point I'm bringing  
11 out here is that there is a document admittedly signed  
12 about whether he signed the body of it, whether that up  
13 to January 31st Allicino worked for him. I'll delete  
14 the entire matter except the sheet that's relevant.

15 MR. WALLACH: Only January?

16 MR. LEVIN-EPSTEIN: I'll put it in as to January.

17 Let the record indicate I'm removing all the  
18 pages in 23 for identification with the exception of  
19 those pages which are marked week ending January 14.

20 THE COURT: Ask him where the prior records are.  
21 Is that all that's produced? What happened to prior  
22 to January?

23 MR. LEVIN-EPSTEIN: I asked him for all the  
24 records of January. This is all that were produced.

25 THE COURT: I would like to know. If this is the



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only record I have I would have to let in more: that  
this is the actual -- He admitted it's the payroll  
records. Ask him where the rest of it is.

MR. LEVIN-EPSTEIN: I'll ask him. The only doc-  
uments that are included in the exhibit as just described  
are the bottom three pages, are those pages marked week  
ending January 14, 1972, week ending January 31, 1972;  
and week ending January 28, 1972.

(continue next page)

BD 5

(Whereupon side bar conference was concluded.)

MR. LEVIN-EPSTEIN: Offered in evidence.

THE COURT: Yes.

THE CLERK: Government's Exhibit 23 received in evidence.

CROSS-EXAMINATION

BY MR. LEVIN-EPSTEIN (Continuing):

Q Mr. Rossenwasser, appearing on the folder in which Government's Exhibit 23 is contained there appears, does there not, the notation 1972, payroll?

A Yes.

Q Could you tell the jury, please, who put that notation on the file, if you know?

A Maybe the accountant.

Q Do you have any personal knowledge of that?

A No, I don't.

Q Would it be fair to say that contained within Government's Exhibit 23 in evidence at this time are three ledger sheets?

A Yes.

Q Will you tell the jury for what period those three ledger sheets correspond.

A I don't understand you.

Q For what period of time do those three sheets



Rosenwasser-cross

reflect the payroll of 1972 at Trecon Sportswear.

A I don't understand the question.

Q Let me ask you this question. Directing your attention to this page, what notation is made in the upper right-hand corner?

A Week ending January 14, 1972.

Q Does there appear a listing, at least the name of one person to whom payroll was made out the week ending January 14, 1972?

A Yes.

Q Whose name is that, sir?

A Queen Jones.

Q Is Mr. Allicino's name anywhere on that?

A No.

MR. NEWMAN: May I renew my objection?

THE COURT: Bear in mind this exhibit has only been admitted as against Mr. Rosenwasser, not against Mr. Allicino.

Q I direct your attention to the next sheet, tell the jury what is in the upper right-hand corner of that sheet.

A Week ending January 21, 1972.

Q Whose name appears on that sheet?

A Queen Jones.

## Rosenwasser-cross

- 1
- 2 Q Do you see Mr. Allicino's name anywhere on that?
- 3 A No.
- 4 Q What does this one say finally, sir?
- 5 A January 28.
- 6 Q What year?
- 7 A '72.
- 8 Q Do you see Mr. Allicino's name anywhere on
- 9 there?
- 10 A No.
- 11 Q Do you see your own name on there?
- 12 A Yes.
- 13 Q Does this mean that Mr. Allicino was not paid
- 14 by your company during any one of those three weeks, sir?
- 15 A That's all it says there.
- 16 Q Is that what it means?
- 17 A Yes.
- 18 Q Can you tell the jury, please, if you can,
- 19 where the record for the week ending January 7th are?
- 20 A Whatever you have there.
- 21 Q Do you have any independent knowledge as
- 22 to where the ledger sheets for the week of January 7, 1972
- 23 are?
- 24 A I couldn't tell you anything about 1972.
- 25 Q Is it fair to say you have no knowledge?



4

1

Rosenwasser-cross

2

A I can't remember 1972.

3

Q You testified on direct examination,

4

Mr. Rosenwasser, that the first time you had ever heard  
5 of Paul Fleischer was to do with this case?

6

A Yes.

7

Q You never heard of him before?

8

A No.

9

Q You never met him anywhere?

10

A No.

11

Q And the first time you saw him was when you  
12 testified here for this trial?

13

A Yes.

14

Q And the same thing with Peters and Addolorio,  
15 they weren't here?

16

A They weren't here, I don't know who they are.

17

Q You've never seen them?

18

A No.

19

Q Mastriangelo.

20

A I've never seen them. If they walked right  
21 past me I wouldn't know them.

22

Q Did you ever do any business of any kind with  
23 Fleischer?

24

A I don't know the name. I can't do business  
25 with somebody I don't know.

Rosenwasser-cross

5

1

2

Q You have socialized with him in any way?

3

A Don't know the man.

4

Q Have you ever met with him at his home

5

anywhere?

6

A Don't know the man.

7

Q You have absolutely no contact according to

8

your testimony with Mr. Fleischer up to the time that

9

he testified in this case; is that correct?

10

A Yes.

11

Q Did you hear Mr. Fleischer testify that you

12

had never threatened him?

13

A Yes.

14

Q Was he lying?

15

MR. WALLACH: Objection, your Honor.

16

THE COURT: I'll allow it.

17

Q Was he lying when he said you never threatened

18

him, Mr. Rosenwasser?

19

A He could be lying, he doesn't know me.

20

Q So he was telling the truth about that?

21

A Maybe from the whole thing, maybe that's the

22

only thing in his testimony that he told the truth about.

23

Q Is it your testimony, Mr. Rosenwasser, for the

24

entire testimony that Fleischer gave, the only truthful

25

thing that he said was that Seymour Rosenwasser never



6

1

Rosenwasser-cross

2

threatened me?

3

A That's right.

4

MR. WALLACH: Objection, your Honor, this

5

covers lengthy testimony.

6

THE COURT: He said that's right.

7

MR. LEVIN-EPSTEIN: I have no further

8

questions of this witness, your Honor.

9

REDIRECT EXAMINATION

10

BY MR. PELUSO:

11

Q Mr. Rosenwasser, would you examine Government's

12

Exhibit 22 in evidence?

13

A I looked at it.

14

Q Whose signature is that at the base of that?

15

A Mine.

16

Q Any of the other writing on that Government

17

exhibit written by you?

18

A No.

19

Q Do you know when it was written there?

20

A No.

21

Q Do you know who wrote it there?

22

A No.

23

Q Is that your letterhead?

24

A Yes.

25

Q Did you address that letter to the First

1 National Bank on behalf of anyone?

2 A No.

3 Q You were asked earlier by Mr. Levin-Epstein  
4 did you lie to the First National City Bank on behalf  
5 of Gerald Allicino. I am going to ask you, sir --

6 A How could I lie to them, I didn't bother with  
7 them. How could I lie? I don't know them. I don't go  
8 there.

9 Q You were shown, sir, some payrolls covering  
10 the week ending January 14, 1972; January 21, 1972;  
11 January 28, 1972. On examining them you said that  
12 Mr. Allicino's name did not appear on those; is that right?

13 A Yes.

14 Q Why didn't his name appear on those?

15 A He hasn't been working for me.

16 MR. PELUSO: I have no further questions.

17 RECROSS EXAMINATION

18 BY MR. LEVIN-EPSTEIN:

19 Q Is it your testimony that somebody else wrote  
20 this note over your signature?

21 A I don't know.

22 Q Is it your testimony, sir, that somebody  
23 tricked you into signing a blank letterhead?

24 A I can't remember 1972.



## Rosenwasser-recross

Q Is it your testimony, Mr. Rosenwasser, that you never had any communication?

A I'm sorry, let me see that letter?

Q Indicating Government's Exhibit 22.

A Could you stay here for a moment?

Q With the Court's permission.

A Can I show this to you, your Honor?

THE COURT: Answer questions.

THE WITNESS: This is my signature; is that right?

MR. LEVIN-EPSTEIN: Indicating the signature at the bottom of Government's Exhibit, your Honor.

THE WITNESS: That's my signature. This handwriting -- would you say this handwriting is the same as this?

MR. LEVIN-EPSTEIN: Thank you, Mr. Rosenwasser.

## RE-CROSS-EXAMINATION

BY MR. LEVIN-EPSTEIN (Continued):

Q Mr. Rosenwasser, is it your testimony that you had no contact with the First National City Bank with respect to a loan transaction concerning Mr. Allicino?

MR. NEWMAN: Objection, that presupposes that such a transaction took place.

MR. LEVIN-EPSTEIN: The Government would be

Rosenwasser-re cross

happy to make an offer of proof.

THE COURT: Are you going to connect it?

MR. LEVIN-EPSTEIN: If necessary it could be made subject to connection.

THE COURT: Connect it. Bear in mind this testimony, the answer is not offered as against Mr. Allicino at this stage.

Q Is that your testimony, sir?

A Whatever I told you.

MR. LEVIN-EPSTEIN: No further questions.

THE COURT: You may step down. Thank you.

MR. PELUSO: Defendant Rosenwasser at this time rests.

MR. LEVIN-EPSTEIN: May we approach the side bar, your Honor?

(Whereupon side bar conference was had.)

MR. LEVIN-EPSTEIN: In the interest of expediting this matter the Government would like to put in a rebuttal case and to that end I would ask, and I'm sure Mr. Newman will join with me a Court instruction to the jury that the last question of Mr. Rosenwasser with respect to loan transaction is not to be considered against either party; is that a fair statement?



Rosenwasser-recross

471

10 1  
2 MR. NEWMAN: Why not just strike the question  
and answer.

4 MR. LEVIN-EPSTEIN: I represent to the Court  
5 if put to the test I could call in the bank officer  
6 but I think it's a collateral matter.

7 THE COURT: Read back the last question.

8 (Last question read.)

9 THE COURT: Ladies and gentlemen, disregard  
10 the last question asked by the prosecutor to wit the  
11 record shows there is no answer anyway and I caution  
12 you, of course, the statement of counsel in their  
13 questions are not evidence unless they are confirmed  
14 from the witness stand. The last question was with  
15 respect to a loan transaction had by Mr. Allicino  
16 with the First National City Bank -- disregard that  
17 question.

18 MR. NEWMAN: Thank you.

19 MR. LEVIN-EPSTEIN: With that ruling the  
20 Government rests.

21 THE COURT: Ladies and gentlemen, we'll have to  
22 take a five minute recess. We'll recall you in a  
23 moment. Don't discuss the case.

24 (Whereupon jurors were excused.)

25 MR. WALLACH: I'm constrained to make a motion

11

1 for a judgment of acquittal.

2

3 THE COURT: You don't go first. I think he  
4 goes first.

4

5 MR. WALLACH: I apologize.

5

6

7 MR. NEWMAN: I move for a judgment of  
8 acquittal, your Honor, under Rule 29. Your Honor  
9 heard the evidence, no need for me to rehash it.

8

9 THE COURT: I'll have to deny it.

9

10

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MR. NEWMAN: In the alternative, may I respectfully move for a severance on the grounds the case has now evolved and revolved seems to have centered about certain items of testimony involving the witness Rosenwasser concerning a note, and I would indicate to your Honor that there is no real way of extricating my client from the ~~clutter~~ surrounding the note. It was really irrelevant except to the issue of credibility and recollection on the part of Mr. Rosenwasser and I think the spill-over of it is such that I frankly confess I didn't know how to handle it. I was presented with certain Hobson choices to go in and take it all apart. I felt whatever method I followed would spill over, it was so dangerous against my client there was no way of explaining it. I submit that an aura is created so conspiratorial, actions concerning that particular



12 1 loan and everything else involving it, it really  
2 doesn't go to the issue of Rosenwasser's credibility.  
3 I know I don't have a true type Bruton situation,  
4 this has been presented for cross-examination -- what  
5 I'm saying to your Honor, the dilemma I find myself in,  
6 the prejudice to my client makes it impossible to get  
7 in my mind to get out from under it, and it's not  
8 something that I could control. It's not something  
9 that I could set into motion and then try to stop.  
10 There is no way that I could figure out how to handle  
11 it, and I just think for him to get a fair trial --  
12 maybe it makes me look stupid, I have no way of  
13 handling that particular note and I have nothing to  
14 do with it. As far as putting or exposing it or how  
15 to really gracefully get away from it, maybe it's my  
16 shortcoming.

17 THE COURT: I don't think it's grounds for a  
18 severance.

19 MR. NEWMAN: Of course I'm calling for a rather  
20 expensive exercise of your discretion. I can't put  
21 my finger on a case that authorized it.

22 THE COURT: The fact that one defendant took  
23 the witness stand and said what a jury might or might  
24 not believe is not really grounds to sever as against  
25 the other one, because of the "spill-over" if there

13

1 be one.

2 MR. NEWMAN: I recognize what your Honor is  
3 saying as a general principle. The thing that  
4 bothers me is the contents of the particular note  
5 itself, the fact that it refers to Allicino, it's  
6 addressed to the First National City Bank, then I  
7 think, your Honor, it takes it out of the province  
8 of straight credibility situation. It seems like  
9 he's in league with it.

10 THE COURT: Of course, but this is one of  
11 the problems you have in a case of this kind and if  
12 he had gotten up there and testified that he knew  
13 for example that Allicino has been involved in this  
14 whole transaction, that would have been even more of  
15 a spill-over against your client.

16 MR. NEWMAN: That I can cross-examine him  
17 about it.

18 THE COURT: You could have cross-examined on  
19 the theoretical basis, it's just one of those things.

20 MR. NEWMAN: May the record just note my motion  
21 for a severance.

22 THE COURT: I just don't think there is a  
23 basis for it.

24 MR. NEWMAN: The main conjecture, if I might,  
25 I know I'm beating a dead horse, just to complete the



14 1 record. My big problem with it is it's not something 175  
2 clearly through the scope of their conspiracy that  
3 I could see happening, now I'm married to it. It  
4 predates it, goes back to January and I am indicating  
5 on grounds of relevancy, not within the scope of  
6 the conspiracy; and thirdly the prejudicial spillover,  
7 I respectfully move for a severance.

8 THE COURT: I have to deny it.

9 MR. WALLACH: May I be heard? I move for a  
10 mistrial first on the following grounds. In regard  
11 to the last phase of the testimony we are being denied  
12 our right of confrontation. I should be constrained  
13 to say perhaps we should call Mr. Allicino as a  
14 witness since his name is mentioned and he's the  
15 alleged beneficiary of any loan, and the inference  
16 flowing from that to a jury could be that my client  
17 had some kind of arrangement, where a bank was  
18 defrauded or furnished a false statement. My client  
19 denies that, it's true, but at the same time there is  
20 no showing she had a stake in it. This bring up  
21 again as an attempted impeachment --

22 THE COURT: That's all it is.

23 MR. WALLACH: Your Honor, this to a jury of  
24 laymen, this may become the case instead of what  
25 Mr. Fleischer said as opposed to my client. That's

1 what we are here for to determine the credibility  
2 of these two witnesses and to determine the basis of  
3 all of the evidence. I understand it's also a  
4 collateral matter. I'm constrained, I don't want to  
5 be naive and say I want to call Mr. Allicino. He  
6 wouldn't get up and testify in his own behalf, he's  
7 not going to waive his rights. We are being denied  
8 the right to call a witness. This is a collateral  
9 matter that frankly never should have occurred.

10 THE COURT: It's collateral in the sense I  
11 will instruct the jury it has been introduced for  
12 impeachment purposes only, and this is not to be  
13 taken as evidence in chief, but that is the purpose  
14 for which it was offered under credibility of the  
15 witness.

16 MR. LEVIN-EPSTEIN: As I understand the  
17 credibility of any witness, but particularly the  
18 defendant is never a collateral matter.

19 THE COURT: In this case it's terribly  
20 important.

21 MR. WALLACH: The question asked of him, he  
22 testified that he employed Allicino in '57 and he  
23 was kept --

24 THE COURT: This is the heart of this matter.  
25 I think you understand when I say that your man said



1 in effect that he had very light contact with  
2 Mr. Allicino and now, at least, one bit of evidence  
3 shows that this may not have been the case, may or  
4 may not have been the case. This is something to be  
5 argued to the jury and it doesn't -- it's not being  
6 offered as to the truth of the matter asserted  
7 therein as such, it's being offered to impeach his  
8 credibility.

9 MR. WALLACH: I have another argument. May I  
10 be heard? I move under the Fifth Amendment  
11 specifically the due process, because the Government  
12 had this document in its possession, it was never  
13 shown to us. Be that as it may, whether we had a  
14 right to it or not is irrelevant. Let's even say we  
15 didn't have the right, due process, elementary  
16 fairness. It may be that the man didn't remember.  
17 It may have been an untruth but not an intentional  
18 falsehood; it may have been something he overlooked.  
19 It may be the fact that he's on the stand and  
20 irrespective -- and when I say irrespective, his  
21 behavior, his attitude with your Honor, there is a  
22 subjective element to any witness on the stand to  
23 make a statement like this. If we had known about  
24 this this all could have been avoided but what the  
25 prosecutor has done over here was to ask him a

1 question about Allicino, keep asking whether he ever <sup>178</sup>  
2 told anybody else and then confront him with this.

3 THE COURT: That's the purpose of cross-  
4 examination.

5 MR. WALLACH: But I submit it's a trap.

6 THE COURT: As far as confrontation documents,  
7 I know of no rule, and certainly based on my  
8 experience --

9 MR. WALLACH: A case came down, I read it this  
10 morning where a witness was called before a grand  
11 jury on the Task Force --

12 THE COURT: Grand jury testimony is something  
13 else.

14 MR. WALLACH: Never told that the witness was  
15 a target, they affirmed dismissal of a perjury. It's  
16 unfair of the prosecutor to do that.

17 THE COURT: I don't think it's unfair. This  
18 is a question of credibility and this is not offered  
19 for the case in chief, if it was then I would agree  
20 with you that he should have given you a document  
21 before, but not confrontation documents.

22 MR. WALLACH: I also now move under Rule 29 --  
23 I don't want to be repetitive -- I say that, however,  
24 in view of the witnesses over here, your Honor has  
25 observed their demeanor, I think the benefit of the  
doubt should be given to Mr. Rosenwasser, the motion



1 should be granted.

2 THE COURT: I have to deny the motion.

3 MR. WALLACE: Can I have a part of that five  
4 minutes, Judge, but before we take part of the five  
5 minutes, the question is should we start summation  
6 this afternoon or should we take them tomorrow  
7 morning at 9:30.

8 THE COURT: How long will you be?

9 MR. LEVIN-EPSTEIN: As I anticipate, I  
10 wouldn't think -- the initial summation would last  
11 more than 35 or 40 minutes, that would be very long.  
12 I would think less than that.

13 MR. NEWMAN: Would your Honor consider ruling  
14 on the requests to charge?

15 THE COURT: I'll do that tomorrow afternoon.  
16 Another question, I'm trying to fit it in, can we  
17 fit it all in tomorrow morning.

18 MR. LEVIN-EPSTEIN: Rather than go over  
19 tomorrow morning with the summation and charge?

20 THE COURT: That's what I'm thinking. Can we  
21 fit it all in tomorrow morning at 9:30. If I could  
22 start charging the jury at 12:00 I could get it to  
23 them before lunch, which means you have to stipulate  
24 to a time schedule and I'll have to hold you to it.

25 MR. LEVIN-EPSTEIN: That's okay with the

pa/ss

1/12

1 THE COURT: All right, gentlemen, we are going  
2 to take about a ten-minute recess, then we are going  
3 to ask the marshals to take the luncheon orders from  
4 you, because my charge is going to run approximately  
5 an hour in length, so if you send out for lunch say at  
6 a quarter to 12:00, you should have it here about  
7 quarter to 1:00. As far as the alternates are  
8 concerned, it's up to you. If you wish to order  
9 lunch, you may. When you are instructed on the law  
10 you may wait in the witness room across the hall or  
11 in the alternative, you can go right after the charge  
12 on the law and go about your own business. That's up  
13 to you. I will give you the option.

14 So, we will take a ten-minute recess. Don't  
15 discuss any aspects of the case. Then we will begin  
16 instructions on the law. Okay.

17 (Whereupon, the jury leaves the Courtroom at  
18 11:35 o'clock a.m.)

19 (Whereupon, a short recess was taken.)

20 (Whereupon, the jury entered the Courtroom at  
21 11:50 o'clock a.m.)

22 THE COURT: It's my practice to read the  
23 instructions on the law to juries, and I am not going  
24 to vary it in your case, I am going to read the  
25 instructions to you. I realize it makes it more



2 1

## Charge

2           difficult for you to follow if I read it, rather than  
3           if I give it extemporaneously, but I am just going to  
4           beg your indulgence, because if I read the instructions  
5           it minimizes the risk for error, and may solve  
6           problems in the long run. It requires a little effort  
7           on your part, if my voice starts to fall, and you can't  
8           hear any portion of the instructions, let me know,  
9           raise your hand or do something to attract my attention.  
10          I will try to keep my voice up.

11                 Now that you have heard the evidence and the  
12                 argument, it becomes my duty to give the instructions  
13                 of the Court as to the law applicable to this case.

14                 It is your duty as jurors to follow the law as  
15                 stated in the instructions of the Court, and to apply  
16                 the rules of the law, so given to the facts as you find  
17                 them from the evidence in the case.

18                 You are not to single out one instruction alone  
19                 as stating the law, but must consider the instructions  
20                 as a whole.

21                 Neither are you to be concerned with the wisdom  
22                 of any rule of law stated by the Court,   Regardless of  
23                 any opinion you may have as to what the law ought to  
24                 be, it would be a violation of your sworn duty to base  
25                 a verdict upon any other view of the law than that given

## Charge

3 1  
2 in the instruction of the Court; just as it would be  
3 a violation of your sworn duty, as judges of the facts,  
4 to base a verdict upon anything but the evidence in the  
5 case.

6 You must not permit yourselves to be governed  
7 by sympathy, bias, prejudice or any other considerations  
8 not founded on evidence and these instructions on the  
9 law.

10 Justice through trial by jury must always  
11 depend upon the willingness of each individual juror  
12 to seek the truth as to the facts from the same  
13 evidence presented to all the jurors; and to arrive at  
14 a verdict by applying the same rules of law as given in  
15 the instructions of the Court.

16 You have been chosen and sworn as jurors in this  
17 case to try the issues of fact presented by the  
18 allegations of the indictment and the denial made by  
19 the "not-guilty" pleas of the accused. You are to  
20 perform this duty without bias or prejudice as to any  
21 party.

22 Again the law does not permit jurors to be  
23 governed by sympathy, prejudice, or public opinion.  
24 Both the accused and the public expect that you will  
25 carefully and impartially consider all the evidence in



2 the case, follow the law as stated by the Court and  
3 reach a just verdict, regardless of the consequences.

4 I am not sending the exhibits which have been  
5 received in evidence with you as you retire for your  
6 deliberations. You are entitled, however, to see any  
7 or all of these exhibits as you consider your verdict.  
8 I suggest that you begin your deliberations and then,  
9 if it would be helpful to you, you may ask for any or  
10 all of the exhibits simply by sending a note to me  
11 through one of the deputy marshals stationed outside  
12 your jury room door.

13 Now, as I have told you here before, an  
14 indictment is but a form or method of accusing a  
15 defendant of a crime. It is not evidence of any kind  
16 against the accused.

17 There are two types of evidence from which a  
18 jury may properly find a defendant guilty of a crime.  
19 One is direct evidence, such as the testimony of an  
20 eye-witness. The other is circumstantial evidence,  
21 the proof of facts and circumstances which rationally  
22 imply the existence or non-existence of other facts  
23 because such other facts usually follow according to  
24 the common experience of mankind. For example, the  
25 footprint of a man in the sand implied to Robinson

2 Crusoe that there was another man with him on the  
3 desert island, and indeed there was, the man Friday.  
4 Thus, on the one hand you may have direct evidence of  
5 the issue, and on the other hand, you may have  
6 circumstantial evidence of the issue.

7 The law does not hold that one type of evidence  
8 is necessarily of better quality than the other. As  
9 the law requires only that the Government proves its  
10 case beyond a reasonable doubt both on the direct and  
11 circumstantial evidence. At times the jury might feel  
12 that circumstantial evidence is of better quality. At  
13 other times they may feel direct evidence is of  
14 better quality. That judgment is left entirely to you.

15 As a general rule, the law makes no distinction  
16 between direct and circumstantial evidence, but simply  
17 requires that, before convicting a defendant, the jury  
18 be satisfied of the defendant's guilt beyond a  
19 reasonable doubt from all the evidence in the case.

20 The law presumes the defendants to be innocent  
21 of the crime. Thus a defendant, although accused,  
22 begins the trial with a "clean slate" with no evidence  
23 against him. And the law permits nothing but legal  
24 evidence presented before the jury to be considered in  
25 support of any charge against the accused. So the



## Charge

presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendants' guilt after careful and impartial consideration of all the evidence in the case.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. The burden never shifts to a defendant; for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a juror because of his or her reluctance to perform an unpleasant task. It does not mean a doubt arising from the natural sympathy which we all have for others. It is not necessary for the Government to prove the guilt of the defendant beyond all possible doubt. Because if that were the rule, very few people would ever be convicted. It is practically impossible for a person to be absolutely sure and convinced of any controverted fact which, by its nature, is not susceptible of mathematical certainty. In consequence, the law says that a doubt should be a reasonable doubt, not a possible doubt.

## Charge

1 A reasonable doubt is a doubt based upon reason  
2 and common sense, the kind of doubt that would make a  
3 reasonable person hesitate to act. Proof beyond a  
4 reasonable doubt must therefore be proof of such a  
5 convincing character that you would be willing to rely  
6 and act upon it unhesitatingly in the most important  
7 of your affairs.  
8

9 The jury will remember that a defendant is  
10 never to be convicted on mere suspicion or conjecture.

11 Again, a reasonable doubt means a doubt that is  
12 based on reason and must be substantial rather than  
13 speculative.

14 It must be sufficient to cause a prudent person  
15 to hesitate to act in the most important affairs of  
16 his or her life.

17 The requirement of proof beyond a reasonable  
18 doubt operates on the whole case and not on the  
19 separate bits of evidence. Each individual item of  
20 evidence need not be proven beyond a reasonable doubt.

21 Now, the indictment in this case contains two  
22 counts, the first is the so-called substantive count,  
23 and the second the conspiracy count.

24 They must each be considered separately.

25 The indictment names two defendants. They are



## Charge

the only persons whose guilt or innocence you must announce in your verdict.

In the determination of guilt or innocence you must bear in mind that guilt is personal, the guilt or innocence of a defendant on trial before you, must be determined separately with respect to himself, solely on the evidence against him or the lack of evidence.

In the case of each defendant you must consider the proof or lack of proof of the charge against him, and not against somebody else.

Now, it is charged in Count 1 of the indictment that "on or about the 6th day of March, 1972, within the Eastern District of New York, the defendants Gerald Allicino and Seymour Rosenwasser did willfully and unlawfully receive and have in their possession a quantity of women's knitted garments having a value in excess of \$100, which goods had been stolen on or about March 3rd, 1972, from a motor truck belonging to the Arlene Knitwear Company, Brooklyn, New York, while moving as a part of and constituting an interstate shipment of freight from New York to New Jersey.

"The defendants, Seymour Rosenwasser and Gerald Allicino knowing the same to have been stolen in violation of Title 18, United States Code Section 659

## Charge

and Section 2."

Section 659 of Title 18 of the United States Code reads in pertinent part as follows:

"Whoever embezzles, steals, or unlawfully takes, carries away from any motor truck or other vehicle with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express or other property; or

"Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been embezzled or stolen."

Shall be guilty of an offense against the laws of the United States.

Count 1 also cites Section 2 of Title 18 which is the aiding and abetting section and which reads as follows:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

"Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."



R13

1  
2 THE COURT: (Continuing) Now, the essential  
3 elements of the counts charged on Count 1 which must be  
4 proved beyond a reasonable doubt are as follows:

5 One, that the accused had the goods or  
6 merchandise in his or their possession, as the case may  
7 be;

8 Two, that such goods or merchandise exceeded  
9 in value of \$100;

10 Three, that such possession was done knowingly  
11 and intentionally;

12 Four, that such goods or merchandise had been  
13 stolen unlawfully, taken or carried away from a motor  
14 truck or other vehicle while the goods or merchandise  
15 were moving as a part of or constituted an inter-  
16 state shipment of freight, express or other property;  
17 and

18 Five, that the accused knew such goods or  
19 merchandise had been stolen.

20 It is not necessary that the accused knew that  
21 the goods or merchandise had been stolen from a  
22 motortruck or other vehicle while the goods or  
23 merchandise were moving as part of a foreign shipment.  
24 It is necessary only that the proof showed that the  
25 accused knew that the goods or merchandise had been

2

## Charge of the Court

1  
2 stolen.

3 Now, with respect to all of the counts of the  
4 indictment, the term "interstate shipment of freight  
5 or express" includes a shipment in interstate  
6 commerce.

7 Section 10 of Title 18 of the United States  
8 Code provides that:

9 "The term interstate commerce includes" commerce  
10 between one state and another state.

11 The interstate character of property stolen is  
12 an essential element of this offense. The property  
13 must either be moving in or be part of an interstate  
14 shipment at the time of the theft.

15 The interstate character of the shipment  
16 commences when the property is segregated for inter-  
17 state shipment and comes into possession of those who  
18 are affecting its course in interstate commerce and  
19 continues until the property arrives at its destina-  
20 tion and is there delivered.

21 Section 659 of Title 18 of the United States  
22 Code further provides that:

23 "To establish the interstate commerce character  
24 of any shipment in any prosecution under this section  
25 the way bill or other shipping document of such



shipment shall be prima facie evidence of the place from which and to which such shipment was made."

Prima facie evidence means sufficient evidence, unless outweighed by other evidence in the case. In other words, way bills or bills of lading or other shipping documents such as invoices, if proved, are sufficient to show the interstate commerce character of the shipment in the absence of evidence in the case which leads the jury to a different or contrary conclusion.

Again, the evidence in the case need not establish that the accused actually knew the goods or merchandise mentioned in the indictment constituted a part of an interstate shipment.

The word "unlawfully" means contrary to law. So to do an act unlawfully means to do willfully something which is contrary to law.

The word "stolen" as used in the crime of interstate transportation of stolen goods includes all wrongful and dishonest takings of property with the intent to deprive the owner of the rights and benefits of ownership.

Otherwise stated, the word "steal" is used to denote any dishonest transactions whereby any person

1 obtains that which rightfully belongs to another and  
2 deprives the owner of the rights and benefits of  
3 ownership but may or may not involve the element of  
4 stealth. To steal means to take away from one in  
5 lawful possession without right with the intention to  
6 keep it wrongfully.  
7

8 The Government must establish the value of the  
9 property stolen because the law provides a greater  
10 penalty if the value of the property exceeds \$100.  
11 Value under the statute means face, par or market  
12 value or cost price, either wholesale or retail,  
13 whichever is greater. The value of the property stolen  
14 is a question of fact to be determined by the jury.

15 Proof as to the value of the goods in this case  
16 may be found in the invoices received in evidence.  
17 You are instructed that the defendant's knowledge or  
18 belief in respect to the value of the goods is wholly  
19 irrelevant.

20 In order to authorize the greater penalty, the  
21 Government must establish beyond a reasonable doubt  
22 that the value of the goods or merchandise exceeded  
23 \$100.

24 One of the elements of the crime charged in  
25 each count of the indictment is that each defendant



1  
2 knew that the merchandise he possessed was unlawfully  
3 stolen. And as I have already instructed you, that  
4 must be proven beyond a reasonable doubt.

5 Knowledge is something that you cannot see with  
6 the eye or touch with the finger. It is seldom  
7 possible to prove it by direct evidence.

8 The Government relies largely upon circum-  
9 stantial evidence in this case to establish knowledge.

10 In deciding whether the accused knew the  
11 merchandise was stolen, you must consider all the  
12 circumstances such as how the accused handled the  
13 transaction, how he or they conducted himself or them-  
14 selves. Do his or their actions betray guilty knowledge  
15 that he or they were dealing with stolen merchandise  
16 or are his or their actions those of an innocent man  
17 or men?

18 Guilty knowledge cannot be established by  
19 demonstrating mere negligence or even foolishness on  
20 the part of the accused.

21 Knowledge that the goods may be stolen may be  
22 inferred from the circumstances that would convince a  
23 man of ordinary intelligence that this is the fact.  
24 The element of knowledge may be satisfied by proof  
25 that an accused deliberately closed his eyes to what

otherwise would have been obvious to him.

Thus, if you find that the accused acted with reckless disregard of whether the merchandise was stolen, and with a conscious purpose to avoid learning the truth, the requirements of knowledge would be satisfied unless the accused actually believed they were not stolen.

In this connection, you should scrutinize the entire conduct of the accused at or near the time the offenses were alleged to have been committed.

On the question of possession, possession of property recently stolen, if not satisfactorily explained, is ordinarily a circumstance from which the jury may reasonably draw the inference and find, in the light of surrounding circumstances shown by the evidence in the case, that the person in possession knew the property had been stolen.

Ordinarily, the same inferences may reasonably be inferred from a false explanation of possession of recently-stolen property.

The term "recently" is a relative term, and has no fixed meaning. Whether property may be considered as recently stolen depends upon the nature of the property, and all the facts and circumstances shown



1  
2 by the evidence in the case. The longer the period  
3 of time since the theft, the more doubtful becomes the  
4 inference which may reasonably be drawn from its  
5 unexplained possession.

6 If you find a reasonable doubt from the evidence  
7 in the case that the goods or merchandise described in  
8 counts in count 1 of the indictment was stolen, and  
9 that while recently stolen, the goods or merchandise  
10 were in the possession of the accused, you may, from  
11 those facts draw the inference that the goods or  
12 merchandise were possessed by the accused with knowledge  
13 that the goods or merchandise were stolen, unless  
14 possession of the recently-stolen goods or merchandise  
15 by the accused is explained to the satisfaction of the  
16 jury by other facts and circumstances in evidence in  
17 the case.

18 In considering whether possession of recently  
19 stolen property has been satisfactorily explained, you  
20 are reminded that, in the exercise of constitutional  
21 rights, the accused need not take the witness stand  
22 and testify.

23 There may be opportunities to explain possession  
24 by showing other facts and circumstances, independent  
25 of the testimony of the accused.

## Charge of the Court

8 1  
2 You will always bear in mind that the law  
3 never imposes upon a defendant in a criminal case the  
4 burden or duty of calling any witnesses or producing  
5 any evidence.

6 It is the exclusive province of the jury to  
7 determine whether the facts and circumstances shown  
8 by the evidence in the case warrant any inference  
9 which the law permits you to draw from possession of  
10 recently stolen property. If any possession the  
11 accused may have had of recently-stolen property is  
12 equally consistent with innocence, or if you entertain  
13 a reasonable doubt of guilt, you must acquit the  
14 accused.

15 Now, of course, one of the key elements in the  
16 case is the question of possession, whether the  
17 accused had the possession of the merchandise.

18 The law recognizes two kinds of possession:  
19 actual possession and constructive possession. A  
20 person who knowingly has direct physical control over  
21 a thing, at a given time, is then in actual possession  
22 of it.

23 A person who, although not in actual possession,  
24 knowingly has both the power and the intention, at a  
25



## Charge of the Court

given time, to exercise dominion or control over a thing, either directly or through other person or persons, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

You may find that the element of possession as that term is used in these instructions is present if you find that beyond a reasonable doubt that the defendant had actual or constructive possession, either alone or jointly with others.

An act or failure to act is "knowingly" done, if done voluntarily and intentionally, though not because of mistake or accident or other innocent reason.

(continued next page)

Now, I talked to you a moment ago, I read to you a moment ago, Section 2 of Title 18 of the United States Code, the so-called Aiding and Abetting Section, and I will reread it to you, because that is applicable to Count One.

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

"Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

In other words, every person who wilfully participates in the commission of a crime may be found guilty of that offense. Participation is wilful if done voluntarily and intentionally, and with a specific intent to do something the law forbids, or with a specific intent to fail to do something the law requires to be done; that is to say, with bad purpose, either to disobey or to disregard the law.



1  
2 In order to aid and abet another to commit a  
3 crime, it is necessary that the accused wilfully  
4 associate himself in some way with the criminal  
5 venture, and wilfully participate in it as he would  
6 in something he wishes to bring about; that is to say,  
7 that he wilfully seek by some act or omission of his  
8 to make the criminal venture succeed.

9 An act or omission is "wilfully done," if done  
10 voluntarily and intentionally and with the specific  
11 intent to do something the law forbids, or with the  
12 specific intent to fail to do something the law  
13 requires to be done, that is to say, with bad purpose  
14 either to disobey or to disregard the law.

15 You, of course, may not find any defendant  
16 guilty unless you find beyond a reasonable doubt that  
17 every element of the offense as defined in these  
18 instructions was committed by some person or persons,  
19 and that the defendant participated in its commission.

20 To determine that, ask yourself, "Did he  
21 associate himself with the venture?"

22 "Did he participate in something he wished to  
23 bring about?"

24 "Did he seek by his action to succeed?"

25 If he did, he is an aider or abettor.

Commission of a crime is just as guilty as the person or persons who physically did the alienable act.

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond a reasonable doubt that the defendant was a participant and not merely a spectator.

Guilt may not be inferred from mere association with a guilty party.

Now, I have charged you with respect to the law as to actual and constructive possession, either alone or jointly with others, and the law with respect to possession of property recently stolen and the inference you may but are not required to draw therefrom, that the person in possession knew the property had been stolen, and also with respect to the law as to aiding and abetting in the commission of crime.

Bear in mind that if you find one of the defendants had actual or constructive possession of recently stolen property, you may, but are not required to draw the inference, that he knew the property had been stolen.



But, at the same time, if you do not so find that the other defendant had actual or constructive possession jointly with the first defendant or solely by himself, but merely find that he aided and abetted the first defendant, then you may not infer that such an aider and abettor of the person in possession of recently stolen property knew the property had been stolen. In other words, to draw such an inference, you must first find that the particular defendant had actual or constructive possession either alone or jointly with another of recently stolen property. You may not draw such an inference with respect to one who is merely an aider and abettor of one who had such actual or constructive possession.

Now, it is charged in Count Two of the indictment, and this is the conspiracy count, that "On or about and between the third day of March, 1972 and the 6th day of March, 1972, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Gerald Allicino and the defendant Seymour Rosenwasser, along with others known and unknown to the Grand Jury, did knowingly and wilfully conspire to commit an offense against the

## Charge of the Court

United States in violation of Title 18, Section 659, by conspiring to knowingly and intentionally have in their possession a quantity of ladies' garments having a value in excess of a hundred dollars, which garments, being stolen in 1972 from a motor truck belonging to the Arlene Knitwear Company in Brooklyn, New York, while it was moving as a part of an interstate shipment of freight from New York to New Jersey, the defendants Gerald Allicino and Seymour Rosenwasser knowing them to have been stolen, in furtherance of the act and in furtherance to effect the objective thereof.

The defendants Gerald Allicino and Seymour Rosenwasser committed, among others, the following overt acts:

One, on or about March 6, 1972, within the Eastern District of New York, the defendant Gerald Allicino and the defendant Seymour Rosenwasser met in Brooklyn, New York, all in violation of Title 18, United States Code, Section 371, which provides in pertinent part that:

"If two or more persons conspire to commit any offense against the United States and one or more of such persons do any act to effect the object of the



## Charge of the Court

conspiracy, each" is guilty of an offense against the United States.

The following are the essential elements which are required to be proven beyond a reasonable doubt in order to establish the offense of conspiracy in the indictment:

One, that there was an agreement or conspiracy between two or more persons to violate the law as charged in the indictment;

Two, that the conspiracy described in the indictment was wilfully formed and existed at or about the time alleged;

Three, that the conspiracy was so wilfully formed and existing for the purpose of knowingly and wilfully receiving and having in the possession of the accused, goods or merchandise unlawfully taken from a motor truck or other vehicle, which goods or merchandise had been moving as a part of or which constituted an interstate shipment of property and had a value in excess of \$100, the accused knowing the same to have been stolen;

Four, that the accused wilfully became a member of the conspiracy;

Five, that one of the conspirators thereafter

1  
2 knowingly committed one of the overt acts charged in  
3 the indictment at or about the time and place alleged;

4 Six, that such overt act was knowingly done  
5 in furtherance of the object of the conspiracy as  
6 charged;

7 And seven, that the accused was knowingly and  
8 wilfully a member of the conspiracy, with the intent  
9 to further one of its objectives.

10 If the jury should find beyond a reasonable  
11 doubt from the evidence in the case that existence of  
12 the conspiracy charged in the indictment has been  
13 proved, and that during the existence of the conspiracy,  
14 one of the overt acts alleged was knowingly done by  
15 one or more of the conspirators in furtherance of  
16 some object or purpose of the conspiracy, then proof  
17 of the conspiracy offense charged is complete, and  
18 it is complete as to every person found by the jury  
19 to have been wilfully a member of the conspiracy at  
20 the time the overt act was committed.

21 Now, conspiracy is a combination of two or more  
22 persons, by concerted action, to accomplish some  
23 unlawful purpose. So, a conspiracy is a kind of  
24 "partnership in criminal purposes," in which each  
25 member becomes the agent of every other member. The



1  
2 gist of the offense is a combination or an agreement  
3 to disobey or to disregard the law.

4 Mere similarity of conduct among various persons,  
5 and the fact they may have associated with each other,  
6 and may have assembled together and discussed common  
7 aims and interests, does not necessarily establish  
8 proof of the existence of a conspiracy. Mere associa-  
9 tion may not in and of itself be the basis for an  
10 inference of guilt of conspiracy.

11 However, the evidence in the case need not  
12 show that the members entered into any express or  
13 formal agreement, or that they directly, by words  
14 spoken or in writing, stated between themselves what  
15 their object or purpose was to be, or the details  
16 thereof, or the means by which the object or purpose  
17 was to be accomplished. What the evidence in the case  
18 must show, beyond a reasonable doubt, in order to  
19 establish proof that a conspiracy existed, is that the  
20 members in some way or manner, or through some contri-  
21 vance, positively or tacitly, came to a mutual  
22 understanding to try to accomplish a common and unlaw-  
23 ful plan.

24 The evidence in the case need not establish that  
25 all the means or methods set forth in the indictment

## Charge of the Court

9 1  
2 were agreed upon to carry out the alleged conspiracy;  
3 nor that all means or methods, which were agreed upon,  
4 were actually used to put into operation; nor that  
5 all of the persons charged to have been members of  
6 the alleged conspiracy were such.

7 What the evidence in the case must establish  
8 beyond a reasonable doubt is that the alleged conspiracy  
9 was knowingly formed and that one or more of the means  
10 or methods described in the indict were agreed upon  
11 to be used, in an effort to effect or accomplish some  
12 object or purpose of the conspiracy, as charged in  
13 the indictment; and that two or more persons, including  
14 the accused, were knowingly members of the conspiracy,  
15 as charge in the indictment.

16 (Continued on next page.)  
17  
18  
19  
20  
21  
22  
23  
24  
25



pa/ss

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1  
2 THE COURT: (Continuing.) In your consideration  
3 of the evidence in the case as to the offense of  
4 conspiracy charged, you should first determine whether  
5 or not the conspiracy existed, as alleged in the  
6 indictment. If you conclude that the conspiracy did  
7 exist, you should next determine whether or not each  
8 of the accused willfull\_ became a member of the  
9 conspiracy.

10 If it appears beyond a reasonable doubt from  
11 the evidence in the case that the conspiracy alleged  
12 in the indictment was willfully formed, and that the  
13 defendants lawfully became a member of the conspiracy  
14 either at its inception or afterwards, and that there-  
15 after one or more of the conspirators committed one  
16 or more overt acts in furtherance of some object or  
17 purpose of the conspiracy, then there may be a  
18 conviction even though the conspirators may not have  
19 succeeded in accomplishing their common object or  
20 purpose and in fact may have failed so doing.

21 The extent of any defendant's participation,  
22 moreover, is not determinative of his guilt or  
23 innocence. A defendant may be convicted as a  
24 conspirator even though he may have played only a  
25 minor part in the conspiracy.

1  
2 An "overt act" is an act knowingly committed by  
3 one of the conspirators, in an effort to effect or  
4 accomplish some object or purpose of the conspiracy.  
5 The overt act need not be criminal in nature, if  
6 considered separately and apart from the conspiracy.  
7 It may be as innocent as the act of a man walking  
8 across the street or driving an automobile or using a  
9 telephone. It must, however, be an act which follows  
10 and tends toward accomplishment of the plan or  
11 scheme, it must be knowingly done in furtherance of  
12 some object or purpose of the conspiracy charged in  
13 the indictment. It is not necessary that all of the  
14 overt acts charged in the indictment were performed.  
15 One overt act is sufficient.

16 One may become a member of the conspiracy  
17 without full knowledge of all the details of the  
18 conspiracy. On the other hand, a person who has no  
19 knowledge of a conspiracy, but happens to act in a way  
20 which furthers some object or purpose of the conspiracy,  
21 does not thereby become a conspirator.

22 Before the jury may find that one or more of  
23 the defendants or any other person has become a member  
24 of the conspiracy, the evidence in the case must show  
25 beyond a reasonable doubt that the conspiracy was



2 knowingly formed, and that said defendant or other  
3 person who has claimed to have been a member, willfully  
4 participated in the unlawful plan, with the intent to  
5 advance or further some object or purpose of  
6 conspiracy.

7 To act or participate willfully means to act  
8 or participate voluntarily or intentionally and with  
9 specific intent to do something the law forbids, that  
10 is to say, the act or participate with the bad purpose  
11 either to disobey or to disregard the law.

12 So, if a defendant or any other person, with  
13 understanding of the unlawful character of the plan,  
14 knowingly encourages, advises or assists, for the  
15 purpose of furthering the undertaking or scheme, he  
16 thereby becomes a willful participant, a conspirator.

17 One who willfully joins in an existing conspiracy  
18 is charged with the same responsibility as if he had  
19 been one of the originators or instigators of the  
20 conspiracy.

21 In determining whether a conspiracy existed,  
22 the jury should consider the actions and the  
23 declarations of all the alleged participants. However,  
24 in determining whether a particular defendant was a  
25 member of a conspiracy, if any, the jury should consider

4 1  
2 only his acts and statements. He cannot be bound by  
3 the acts or declarations of other participants until  
4 it is established that a conspiracy existed, and that  
5 he was one of its members.

6 Whenever it appears beyond a reasonable doubt  
7 from the evidence in the case that a conspiracy  
8 existed, and that a defendant was one of the members,  
9 then the statements thereafter knowingly made and the  
10 acts knowingly done, by any person, likewise found  
11 to be a member, may be considered by the jury as  
12 evidence in the case as to the defendants found to  
13 have been a member, even though the statements and  
14 acts made may have occurred in the absence and without  
15 the knowledge of the defendant, provided such statements  
16 and acts were knowingly made and done during the  
17 continuancy of such conspiracy, and in furtherance of  
18 some object or purpose of the conspiracy.

19 Otherwise, any admission or incriminator  
20 statement made or act done outside the Court, by one  
21 person, may not be considered as evidence against any  
22 person who was not present and did not hear the  
23 statement made or see this act done.

24 Therefore, any statement of any conspirator  
25 which are not in furtherance of the conspiracy or made



before its existence or after its termination, may be considered as evidence only against the person making them.

Now, the indictment charges the conspiracy among two defendants, Allicino and Rosenwasser, and also others known and unknown to the grand jury all named in the indictment as co-conspirators. A person cannot conspire with himself, and therefore you cannot find any of the defendants guilty unless you find beyond a reasonable doubt that any such defendant participated in the conspiracy as charged with at least one other person. With this qualification you may find both of the defendants guilty or one of the defendants guilty or one of the defendants guilty and one of the defendants not guilty or both not guilty, all in accordance with these instructions and the facts you find.

An act is done "knowingly" if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake. or accident or other innocent reason.

## Charge

As stated before, with respect to an offense such as charged in this case, specific intent must be proved beyond a reasonable doubt before there can be a conviction.

An act is done "willfully" if done voluntarily and intentionally and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

The knowledge and intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind.

But you may infer a defendant's knowledge and intent from the surrounding circumstances. You may consider any statement made and done or omitted by a defendant, and all other facts and circumstances in evidence which indicate his state of mind. It is ordinarily reasonable to infer that a person intends the nature and probable consequences of acts knowingly done or knowingly omitted.

Now, there was proof in this case which was admitted solely -- I should say there was evidence in this case admitted solely against the defendant Allicino, namely the possession of recently stolen liquor, knowing the same to have been stolen sometime



2           shortly after the events alleged in the indictment.

3           Now, this special instruction, which I said I  
4           would give you on this point reads as follows:

5           The fact that the defendant, Allicino, may have  
6           committed another offense at some time is not any  
7           evidence or proof whatever that, at a prior time, the  
8           accused committed the offense charged in the indict-  
9           ment, even though both defenses are of a like nature.  
10          Evidence as to an alleged earlier or later offense of  
11          a like nature may not therefore be considered by the  
12          jury, in determining whether the accused did the act  
13          charged in the indictment. Nor may such evidence be  
14          considered for any other purpose whatever, unless  
15          the jury first finds that other evidence in the case,  
16          standing alone, establishes beyond a reasonable doubt  
17          that the accused did the act charged in the indictment,  
18          leaving aside only the question of whether he did it  
19          knowingly and willfully.

20          If the jury should find beyond a reasonable  
21          doubt from the other evidence in the case that the  
22          accused, Allicino, did the acts charged in the  
23          indictment, then the jury may consider evidence as to  
24          an alleged earlier or later offense of a like nature,  
25          in determining the state of mind, knowledge or intent

2 with which the accused did the acts charged in the  
3 indictment. And where all the elements of an alleged  
4 earlier or later offense of a like nature are  
5 established by evidence which is clear and conclusive,  
6 the jury may, but is not obliged to, draw the  
7 inference and find that in doing the act charged in  
8 the indictment, the accused, Allicino, acted willfully,  
9 knowingly, and with specific intent, and not because of  
10 mistake or accident or other innocent reason.

11 (Continued next page.)

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Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as proved.

The Court may take judicial notice of certain facts or events. When the Court declares it will take judicial notice of some fact or event, you may accept the Court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed, but you are not required to do so, since you are the sole judges of the facts.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them, and all facts which may have been admitted or stipulated; and all facts and events which may have been judicially noticed; and all applicable presumptions stated in these instructions.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken

1  
2 by the Court, must be entirely disregarded.

3 Evidence does include, however, what is brought  
4 out from witnesses on cross-examination, as well as  
5 what is testified to on direct examination.

6 Unless you are otherwise instructed, anything  
7 you may have seen or heard outside the courtroom is  
8 not evidence, and must be entirely disregarded.

9 You are to consider only the evidence in the  
10 case, and your verdict is to be based on the evidence  
11 only. But, in your consideration of the evidence,  
12 you are not limited to the bald statements of the  
13 witnesses. In other words, you are not limited solely  
14 to what you see and hear as the witnesses testify.  
15 You are permitted to draw, from facts which you find  
16 have been proved, such reasonable inferences as you  
17 feel are justified in the light of experience.

18 Inferences are deductions or conclusions which  
19 reason and common sense lead the jury to draw from  
20 facts which have been established by the evidence in  
21 the case.

22 If a lawyer asks a witness a question which con-  
23 tains an assertion of fact, you may not consider the  
24 assertion as evidence of that fact. The lawyers' state-  
25 ments are not evidence.



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2  
3 You, as jurors, are the sole judges of the cre-  
4 dibility of the witnesses and the weight their testimony  
5 deserves.

6  
7 You should carefully scrutinize all the testi-  
8 mony given, the circumstances under which each witness  
9 has testified, and every matter in evidence which  
10 tends to show whether a witness is worthy of belief.  
11 Consider each witness's intelligence, motive and state  
12 of mind, and demeanor and manner while on the stand.  
13 Consider the witness's ability to observe the matters  
14 as to which he has testified and whether he impresses  
15 you as having an accurate recollection of these matters.  
16 Consider also any relation each witness may bear to  
17 either side of the case; the manner in which each  
18 witness might be affected by the verdict; and the  
19 extent to which, if at all, each witness is either  
20 supported or contradicted by other evidence in the  
21 case.

22  
23 Inconsistencies or discrepancies in the testi-  
24 mony of a witness, or between the testimony of differ-  
25 ent witnesses, may or may not cause the jury to dis-  
credit such testimony. Two or more persons witnessing  
an incident or a transaction may see or hear it  
differently, and innocent misrecollection, like

## Charge of the Court

failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, that you may think it deserves.

An accomplice is one who united with another person in the commission of a crime, voluntarily and with common intent.

An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence.

However, the jury should keep in mind that such testimony is always to be received with great caution and weighed with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond



1  
2 a reasonable doubt.

3       The law does not permit the use of an accomplice,  
4 but whether you approve of their use is not to enter  
5 into your consideration of this case. In certain  
6 types of crime, the Government of necessity is frequently  
7 compelled to rely upon the testimony of accomplices,  
8 persons with criminal records, or informers. Other-  
9 wise, it would be difficult to detect or prosecute  
10 some wrongdoers, and this is particularly true in  
11 conspiracy cases. Often it has no choice in the matter.  
12 It must take the witnesses to the transaction as they  
13 are.

14       It is the universal rule in the Federal Courts  
15 that defendants may be convicted on testimony of an  
16 accomplice standing alone if you believe such testimony  
17 beyond a reasonable doubt. This would be so even though  
18 the accomplice was a confirmed criminal.

19       There are several other persons whose names you  
20 have heard during the course of this trial, and one or  
21 more of the attorneys have referred to their absence  
22 from this trial. Neither of the defendants, nor the  
23 Government may benefit from the absence of such witnesses  
24 or possible witnesses because each side has an equal  
25 opportunity or lack of opportunity to have them testify.

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If either side had wanted any of them here, so far as the record shows, they had equal opportunity to get them and absence should not affect your judgment in passing on this case or in determining the guilt or innocence of the defendants.

Bear in mind, of course, that the law never imposes upon the defendant in a criminal case the burden of producing or calling any witnesses or producing any evidence.

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his or her present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars, and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

A defendant who wishes to testify, however,

100



1  
2 is a competent witness; and the defendant's testimony  
3 is to be judged in the same way as that of any other  
4 witness.

5       The law permits a defendant at his own request  
6 to testify on his own behalf. The testimony of an  
7 individual defendant is before you. You must deter-  
8 mine how far it is credible. The deep personal  
9 interest which every defendant has in the result of  
10 his case should be considered in determining the  
11 credibility of his testimony. You are instructed  
12 that interest creates a motive for false testimony;  
13 that the greater the interest the stronger is the  
14 temptation, and that the interest of a defendant is  
15 of a character possessed by no other witness and is,  
16 therefore, a matter which may seriously affect the  
17 credence that should be given to his testimony.

18       The law does not compel a defendant in a  
19 criminal case to take the witness stand and testify,  
20 and no presumption of guilt may be raised, and no  
21 inference of any kind may be drawn from the failure  
22 of a defendant to testify.

23       As stated before, the law never imposes upon  
24 a defendant in a criminal case the burden or duty  
25 of calling any witnesses or producing any evidence.

1  
2 Now, there has been testimony here to the pre-  
3 vious good character of the defendant Rosenwasser.  
4 You should consider such evidence of character together  
5 with all the other facts with respect to the guilt or  
6 innocence of the defendant Rosenwasser. Evidence of  
7 good character may in and of itself create a reasonable  
8 doubt where, without such evidence, no reasonable  
9 doubt would have existed.

10 But if on all the evidence you are satisfied  
11 beyond a reasonable doubt that the defendant Rosenwasser  
12 is guilty, a showing that he had previously enjoyed  
13 a reputation of good character does not justify or  
14 excuse the offense, and you should not acquit the  
15 defendant Rosenwasser merely because you believe he  
16 is a person of good repute.

17 It may be those with whom the defendant Rosen-  
18 wasser came in contact previously were misled, and  
19 that the defendant Rosenwasser did not reveal to them  
20 his true character.

21 The testimony of a character witness is not  
22 to be regarded by you as expressing the witness's  
23 personal opinion of the defendant Rosenwasser's  
24 character, nor is it to be taken by you as the witness's  
25 opinion as to the guilt or innocence of the defendant



Rosenwasser.

The guilt or innocence of both defendants for  
you and you alone to determine.

(Continued on next page.)

1  
2 It is the duty of the attorney on each side  
3 of the case to object when the other side offers  
4 testimony or other evidence which the attorney believes  
5 is not properly admissible. You should not show  
6 prejudice against an attorney or his client because  
7 the attorney has made objections.

8 Upon allowing testimony or other evidence to  
9 be introduced over the objection of an attorney, the  
10 Court does not, unless expressly stated, indicate any  
11 opinion as to the weight or effect of such evidence.

12 As stated before, the jurors are the sole  
13 judges of the credibility of all witnesses and the  
14 weight and effect of all evidence.

15 When the Court has sustained an objection to a  
16 question addressed to a witness, the jury must disre-  
17 gard the question entirely and may draw no inference  
18 from the wording of it or speculate as to what the  
19 witness would have said if he had been permitted to  
20 answer any question.

21 The fact that the Court has asked one or more  
22 questions of a witness for clarification or admissi-  
23 bility of evidence is not to be taken by you in any  
24 way as indicating that the Court has any opinion as  
25 to the guilt or innocence of the defendant in this case,



1  
2 and you are to draw no such inference therefrom.

3 That determination is up to you and you alone,  
4 based on all the facts in the case, based on the  
5 applicable law in these instructions.

6 You are here to determine the guilt or innocence  
7 of the accused from the evidence in the case. You are  
8 not called upon to return a verdict as to the guilt  
9 or innocence of any other person or persons. So, if  
10 the evidence in the case convinces you beyond a  
11 reasonable doubt of the guilt of the accused, you  
12 should so find, even though you may believe one or  
13 more other persons are guilty. But, if any reasonable  
14 doubt remains in your minds after impartial considera-  
15 tion of all the evidence in the case, it is your duty  
16 to find the accused not guilty.

17 The verdict must represent the considered  
18 judgment of each juror. In order to return a verdict,  
19 it is necessary that each juror agree thereto. Your  
20 verdict must be unanimous.

21 It is your duty as jurors to consult with one  
22 another and to deliberate with a view to reaching  
23 an agreement, if you can do so, without violence to  
24 individual judgment. Each of you must decide the  
25 case for himself and herself, but do so only after an

1  
2 impartial consideration of the evidence in the case  
3 with your fellow jurors.

4 In the course of your deliberations, do not  
5 hesitate to re-examine your own views and change your  
6 opinion, if convinced it is erroneous, but do not  
7 surrender your honest conviction as to the weight or  
8 effect of evidence solely because of the opinion of  
9 your fellow jurors or for the mere purpose of returning  
10 a verdict.

11 Remember at all times you are not partisans,  
12 you are judges -- judges of the facts. Your sole  
13 interest is to seek the truth from the evidence in  
14 the case.

15 There is nothing peculiarly different in the  
16 way a jury should consider the evidence in a criminal  
17 case from that in which all reasonable persons treat  
18 any person, depending upon evidence presented to them.  
19 You are expected to use your good sense, consider the  
20 evidence in the case for only those purposes for which  
21 it has been admitted and give it a reasonable and  
22 fair construction, in the light of your common know-  
23 ledge of the natural tendencies and inclinations of  
24 human beings.

25 If the accused be guilty beyond a reasonable



## Charge of the Court

doubt, say so; if not so proven guilty, say so.

You must render a verdict with respect to each of the two counts and with respect to each of the two defendants. If you fail to find beyond a reasonable doubt that the law has been violated, you should not hesitate for any reason to find a verdict of acquittal.

On the other hand, if you find that the law has been violated, there should be no sympathy or any other reason not to render a verdict of guilty.

If any reference by the Court or by counsel to matters of evidence does not coincide with your recollection, it is your recollection which should control during your deliberations.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court, and should not be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

Upon retiring to the jury room, the lady seated nearest me will act as Forelady. If she chooses not to do so, then you will elect a Foreman or Forelady. The Foreman or Forelady will preside over your

1  
2 deliberations and will be your spokesman here in  
3 court.

4 If it becomes necessary during your delibera-  
5 tions to communicate with the Court, you may send  
6 a note by a Deputy Marshal signed by your Forelady  
7 or by one or more members of the jury. No member of  
8 the jury should ever attempt to communicate with the  
9 Court by any means other than a signed writing, and  
10 the Court will never communicate with any member of  
11 the jury on any subject touching the merits of the  
12 case, otherwise than in writing or orally here in  
13 open court.

14 You will note from the oath which will be taken  
15 shortly by the Deputies that they, too, as well as  
16 all other persons, are forbidden to communicate in  
17 any way or manner with any member of the jury on any  
18 subject touching the merits of the case.

19 Now, remember what I said, that your verdict  
20 must be unanimous.

21 Bear in mind also that you are never to reveal  
22 to any person -- not even to the Court -- how the  
23 jury stands, numerically or otherwise, on the question  
24 of the guilt or innocence of the accused, until after  
25 you have reached a unanimous verdict.



1  
2 In other words, you are not to write any notes  
3 in which you say: We stand thus or so, one way or the  
4 other, what do we do now, Judge?

5 If you do that, then I may have to declare a  
6 mistrial and this case may have to be retried.

7 When and if you reach a unanimous verdict, you  
8 write me a note and state you have reached a verdict.  
9 You announce your verdict here in open court. If,  
10 as and when a time should arrive when you become  
11 hopelessly deadlocked, you can write me a note. I  
12 hope that doesn't happen.

13 Those are the instructions of the Court. We  
14 are going to take approximately five minutes while I  
15 discuss certain matters with the attorneys, and then  
16 I will re-call you.

17 At that time the alternates will be discharged  
18 and they will either proceed to my witness room to  
19 have their lunch or they will be going about their  
20 way, and thereafter you may begin your deliberations,  
21 but not until then.

22 In this five-minute recess, don't discuss the  
23 case.

24 (Whereupon, the jury left the courtroom at  
25 12:45 p.m.)

1 THE COURT: Mr. Levin-Epstein?

2 MR. LEVIN-EPSTEIN: The charge is satisfactory  
3 to the Government, your Honor. You did misspeak, I  
4 think, only one word. I don't think it's significant  
5 enough to mention to the jury as to the portion of  
6 your charge where you indicate to the jury that if  
7 it becomes necessary for them to communicate with the  
8 Court you may send a note signed by your Forelady to  
9 the Marshal. I think you inadvertantly had occasion  
10 to speak to and you said to the jury, it has to be  
11 a signed note. I don't think that's important enough.

12 MR. NEWMAN: I didn't hear that.

13 Judge, may I ask you to read the section to  
14 Aiding and Abetting, twice to the jury?

15 THE COURT: I did. Once when I read the  
16 statute as a whole, 659 and Section 2, and then once  
17 sometime later when I described what was meant by  
18 aiding and abetting.

19 MR. NEWMAN: Your Honor, I object to that. I  
20 have no other objection or exceptions to the charge.

21 THE COURT: I find it very difficult to do it  
22 otherwise, and I have experimented with it over a  
23 period of time and I think that's the only way.

24 MR. WALLACH: I join in the exception.

25 MR. NEWMAN: Judge --



1 THE COURT: Anything else, Mr. Wallach?

2 MR. WALLACH: Nothing else, your Honor.

3 MR. NEWMAN: Your Honor, just a little house-  
4 keeping. You will notice or you may have that a lot  
5 of cheese exhibits came from the Government from  
6 various trials. I have no objection to them going  
7 to the jury if they obscure the other markings.

8 THE COURT: You can't do that.

9 MR. LEVIN-EPSTEIN: No, we can't peel them off.

10 MR. NEWMAN: Is there a possible way of covering  
11 them?

12 THE COURT: You can't, because he's got to have  
13 them for appeals. That's the problem.

14 MR. NEWMAN: Can I suggest just a strip of  
15 white paper, for example, crossing them with some  
16 scotch tape.

17 MR. LEVIN-EPSTEIN: I have no objection.

18 MR. NEWMAN: I just don't want them to start  
19 wondering.

20 THE COURT: I think it's a fair statement.

21 MR. LEVIN-EPSTEIN: I don't object to it being  
22 obscured.

23 MR. NEWMAN: Just by some white paper that  
24 can be removed.

25 MR. LEVIN-EPSTEIN: Why don't we cross that

1 bridge when we come to it?

2 MR. NEWMAN: Fine. Unless you can save some  
3 time.

4 MR. LEVIN-EPSTEIN: There is a lot to cover.

5 THE COURT: I am going to let you go to lunch  
6 right now, and tell the jury to hold any notes until  
7 two o'clock. Do you want to bring them in?

8 (Whereupon, the jury enters the courtroom at  
9 12:50 p.m.)

10 THE COURT: Now, ladies and gentlemen, I should  
11 address myself first to the alternates. Your time has  
12 come, your services are no longer needed, only to the  
13 fact that all your fellow jurors have been so healthy  
14 and taken such good care of themselves over this past  
15 weeeek, and they are here to deliberate. You go with  
16 the thanks of the Court for your attention to the case  
17 and for your promptness on each of the occasions when  
18 you have been called upon to be here. You have  
19 been fantastic alternates, but you don't go to the  
20 actual deliberations, but on the other hand, you do  
21 serve a very valuable purpose, and you do go with  
22 the thanks of the Court.

23 For those of you who have ordered lunch, what  
24 you should do is pick up your belongings now from  
25 the jury room, go out the back, go around, and on your



1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 -----x  
4 UNITED STATES OF AMERICA :  
5 -against- :  
6 GERALD ALLICINO, true name, : 75 CR 278  
7 GERARD ALLICINO, :  
8 Defendant. :  
9 -----x

10 United States Courthouse  
11 Brooklyn, New York

12 May 20, 1976  
13 10:00 a.m.

14 B e f o r e :

15 HONORABLE THOMAS C. PLATT, U.S.D.J.  
16  
17  
18  
19  
20  
21

22 STEVEN TESSLER  
23 ACTING OFFICIAL COURT REPORTER  
24  
25

Appearances:

DAVID G. TRAGER, ESQ.  
United States Attorney  
for the Eastern District of New York

BY: ETHAN LEVIN-EPSTEIN, ESQ.  
Assistant United States Attorney

GUSTAVE H. NEWMAN, ESQ.  
Attorney for Defendant



1 THE COURT: Mr. Newman, is there any reason  
2 we shouldn't proceed with sentencing this morning?

3 MR. NEWMAN: By way of housekeeping, at the  
4 conclusion of the trial, your Honor gave me the  
5 letter today to make my post-trial motion, if I had  
6 anything of substance, to do it on papers. By  
7 absence of papers I just make the classic Rule 29  
8 motion for acquittal.

9 THE COURT: I have to deny the motion.

10 MR. NEWMAN: There are no other reasons that  
11 the defendant is not ready for sentence. I have  
12 read the pre-sentence report together with the  
13 defendant.

14 THE COURT: This is a companion case, when  
15 is that on? Tomorrow?

16 MR. NEWMAN: That is tomorrow, sir.

17 THE COURT: Mr. Allicino, is there any reason  
18 why we shouldn't proceed with the sentence?

19 THE DEFENDANT: No, sir.

20 THE COURT: You wish to say something,  
21 Mr. Newman?

22 MR. NEWMAN: I know your Honor has read my  
23 pre-sentence report. Most of my remarks in my  
24 arguments are really contained in that report. I  
25 would just indicate to your Honor by way of emphasis,

1 the defendant is about to celebrate his 50th birthday  
2 on Sunday. I am troubled by a concept as to what  
3 useful purpose it would be served by sending him back  
4 to jail.

5 Your Honor knows the arguments I have advanced  
6 concerning his prior involvement, concerning his  
7 having served time. He has completed on May 10 his  
8 probationary period. The daughter, who is referred  
9 to in the Pre-Sentence Report, is here in court with  
10 her husband. He has found a new attachment of life,  
11 he has reached 50 years of age, I wouldn't -- if we  
12 can't make a calculated risk and make him a master of  
13 his fate, the last three years as he has. I've  
14 considered your Honor making him the master of his  
15 own fate at 50, if he goofs, Judge, he is back in the  
16 slammer, in plain English. If by this stage in life  
17 he hasn't straightened, then he deserves to be in  
18 a jail. It's really the way I feel about Allicino  
19 and this entire situation.

20 THE COURT: Do you wish to say something,  
21 Mr. Levin-Epstein?

22 MR. LEVIN-EPSTEIN: Nothing, your Honor, except  
23 to of course recall that this event on which  
24 Mr. Allicino was tried. A period of 28 days for which  
25 he was on probation. The Government takes no



1 position with the actual being, within the province  
2 of the Court.

3 THE COURT: Mr. Allicino, do you wish to say  
4 anything?

5 THE DEFENDANT: What can I say, your Honor,  
6 my future is in your hands.

7 MR. LEVIN-EPSTEIN: By my remarks I meant to  
8 emphasize, not that there is another prior event, but  
9 to emphasize that the event for which Mr. Allicino  
10 was on trial occurred prior to the events for which  
11 he has already been sentenced on the other events,  
12 not so much to indicate that it was in aggravation,  
13 if I am making myself clear.

14 THE COURT: No, you are not.

15 MR. LEVIN-EPSTEIN: My only point being the  
16 events he was on trial for here, the record will  
17 show, occurred prior to the time of the events which  
18 he had already been sentenced on the other matter.

19 THE COURT: You're suggesting whatever judge  
20 sentenced him on the other matter took into considera-  
21 tion when he imposed the sentence on that other  
22 matter this -- the facts in this case.

23 MR. LEVIN-EPSTEIN: I don't know, your Honor,  
24 it's not indicated from my investigation of it, but  
25 I don't know the --

1 MR. NEWMAN: I don't think he could have,  
2 because I don't think anybody told him about it.  
3 I wish he could have disposed of it even if it  
4 resulted in more time, at least he would have com-  
5 pleted his time and he would have had a life in  
6 front of him. Instead of getting out, made a new  
7 life and had it interrupted again.

8 THE COURT: Well, the difference, Mr. Newman  
9 and Mr. Allicino, is that this is one of the many  
10 cases all which related, or seemingly related. If  
11 I started making exceptions, I am just going to get  
12 requests from others who are going to point to this  
13 exception and say why didn't you make an exception  
14 in my case.

15 The second problem, of course, is the serious-  
16 ness of the offense which I have always regarded  
17 the fence in part of these hijackings almost as  
18 significant and important as the hijackings them-  
19 selves.

20 MR. NEWMAN: May I just make a comment, your  
21 Honor, I certainly can't argue with the second portion  
22 of your Honor's statement, that is your view and  
23 certainly you are entitled to it.

24 Insofar as the first aspect, I think here we  
25 have a situation totally peculiar by way of perhaps



1 indicating that this can be taken out of the whole  
2 part of cases and treated separately.

3 We have a man that was involved in the same  
4 period of -- in March at the same premises, maybe on  
5 a different floor. He came forward, he pleaded  
6 guilty at that particular moment. Had anybody even  
7 said it to the FBI agent, he would have got additional  
8 time and I couldn't quarrel with it then. Not so much  
9 by virtue of him having done two things in one month,  
10 he should be given -- what is the useful purpose  
11 had they known about all of this and had they given  
12 him two years, or three years and it would have been  
13 finished.

14 If he finished his parole, or probation, he  
15 would have paid his debt. But no facts he had  
16 control over, he served his sentence, he has sat  
17 on May 10, finished his period of probation. I am  
18 wondering if that makes sense, Judge. That is what  
19 I am directing my argument to.

20 THE COURT: It's one factor, Mr. Newman, which  
21 weighs very heavily on me. There is many factors  
22 that come into the fact when you asked for time to  
23 speak, if it was just that one factor that was  
24 involved of course I would go along with you and I  
25 would agree with you and I think that factor is an

1 important fact, but it's not the only factor that  
2 the problem that faces me is, what I am trying to  
3 say to you. I have to weigh that fact along with all  
4 the other factors and I don't really see that I can  
5 just give him a straight probation, is what you ask  
6 for.

7 But, I will fine tailor it so it's not as bad  
8 as it might have been had the circumstances pertained  
9 in this particular case. So, it's adjudged pursuant  
10 to 18 U.S.C.A., Section 3651, that the defendant is  
11 hereby committed to the custody of the Attorney  
12 General for a term of three years, on condition that  
13 the treatment institution for a period of eight months.  
14 The exclusion of the remainder of the sentence is  
15 hereby suspended and the defendant placed on probation  
16 for a period of three years, and the defendant shall  
17 pay a fine to the United States in the sum of \$2500.

18 That is on Count One and the same sentence is  
19 imposed on Count Two, to be served concurrently.

20 It's adjudged 18 U.S.C.A., that the defendant  
21 hereby is authorized represented for imprisonment for  
22 a term of three years, that condition to be for a  
23 period of eight months and exclusion of the remainder  
24 of sentence of prison is hereby suspended and  
25 defendant placed on probation for three years and



1 should pay a fine to the United States in the sum  
2 of \$2500 or a total fine of \$5,000.

3 MR. NEWMAN: I have with me today a Notice of  
4 Appeal. I will be representing the defendant. I  
5 would ask your Honor to consider continuing his  
6 bail status.

7 THE COURT: I will continue his bail status.

8 What about the payment of the fine, Mr. Newman?

9 MR. LEVIN-EPSTEIN: May I ask the Court for  
10 a clarification as to sentence?

11 The Court has imposed a sentence, concurrent  
12 sentence, under Title 18, Section 3651 on both one  
13 and two, as follows, please correct me.

14 A three-year term to serve eight months, the  
15 remainder suspended and in addition a three-year  
16 period of probation, or two and a half year period  
17 of probation?

18 THE COURT: Three years, both are concurrent  
19 except for the fines.

20 MR. NEWMAN: Would your Honor consider staying  
21 the fine until the appeal, until the appeal's been  
22 decided?

23 THE COURT: Yes.

24 MR. NEWMAN: Thank you, sir. Thank you very  
25 much, your Honor. I am wondering aloud, Judge, I

1 think he may have to report to the Magistrate to  
2 sign a new appeal's bond.

3 MR. LEVIN-EPSTEIN: I believe the Court has  
4 continued the bail pending the action.

5 MR. NEWMAN: What is the bail?

6 MR. LEVIN-EPSTEIN: \$5,000 personal recogni-  
7 zance bond, the Government would not object to it.

8 MR. NEWMAN: I will check with the Magistrate.

9 MR. LEVIN-EPSTEIN: It's my understanding that  
10 it's not necessary that the bond will stand in good  
11 standing at this time.

12 \* \* \*



1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 -----x

4 UNITED STATES OF AMERICA :

5 -against- : 75 CR 278

6 SEYMOUR ROSENWASSER, :

7 Defendant. :

8 -----x

9

10 United States Courthouse  
11 Brooklyn, New York

12 May 21, 1976  
13 10:00 a.m.

14

15 B e f o r e :

16 HONORABLE THOMAS C. PLATT, U.S.D.J.

17

18

19

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21

22

23

24

25

STEVEN A. TESSLER  
ACTING OFFICIAL COURT REPORTER

1  
2 **Appearances:**

3 DAVID G. TRAGER, ESQ.  
4 United States Attorney  
5 for the Eastern District of New York

6  
7 BY: ETHAN LEVIN-EPSTEIN, ESQ.  
8 Assistant United States Attorney

9  
10  
11 PETER A. PELUSO, ESQ.  
12 Attorney for Defendant

13  
14 BY: ARNOLD J. WALLACH, ESQ., of Counsel  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 THE COURT: Any reason we shouldn't proceed  
2 with sentencing, Mr. Rosenwasser?

3 Do you wish to say something?

4 MR. WALLACH: If I may be heard.

5 MR. LEVIN-EPSTEIN: If I might interrupt this  
6 for a moment.

7 The Court did allow counsel to serve this in  
8 time for motion. For the record, I have received  
9 no motion papers or any other motion for proposed  
10 verdict of acquittal.

11 MR. WALLACH: We're going to for a judgment  
12 of acquittal on this case, if your Honor wants a  
13 full argument we're happy to do so.

14 There is an issue -- May I proceed?

15 THE COURT: Of course.

16 MR. WALLACH: There was an issue over here  
17 where your Honor may recall that in the late stage  
18 of this case before trial there was an order for  
19 mutual discovery. We complied, yet when Mr. Rosen-  
20 wasser took the stand United States Attorney had a  
21 document signed to him which came to my complete  
22 surprise.

23 With regard to the other area, there was a  
24 spillover with regard to the building being the  
25 locale of a prior transaction on the part of the

1 co-defendant and of course your Honor did tell the  
2 jury to keep that -- to keep his case insulated to  
3 that extent. Also, the question over here that we  
4 believe that the verdict was not supported by the  
5 evidence. There is no--corroboration of course is  
6 required for a testimony of an accomplice.

7 Very frankly I think we're entitled to a  
8 setting aside of the verdict, we call a judgment  
9 NOV I believe and upon all the other arguments raised  
10 at trial, Judge.

11 THE COURT: Well, I fully understand that the  
12 argument about corroboration, but be that as it may  
13 the testimony of this witness Fleischer has been  
14 found credible by three or four juries I believe it  
15 is now. I can't say as a matter of law that it's  
16 incredible obviously given the record of testimony.  
17 I think the rulings I made on the question of law  
18 are correct, and of course under those circumstances  
19 I have to deny your motion.

20 MR. WALLACH: There was an incident on  
21 Government's direct case, there was a federal agent  
22 I believe who interviewed Mr. Rosenwasser and when  
23 it came Mr. Peluso -- Mr. Rosenwasser's attorney --  
24 to cross-examine, an issue arose as to whether  
25 Mr. Peluso could ask and attempt to elicit from this



1 agent when he spoke to Rosenwasser. Mr. Rosen-  
2 wasser indicated he did nothing do, or didn't see  
3 these people, didn't know these people. Your Honor  
4 indicated this cannot be asked and Mr. Peluso cannot --  
5 with the Government's witness -- cannot attempt to  
6 vindicate his abstinence and we're relying upon your  
7 Honor's reconsideration on that which motivated  
8 Mr. Rosenwasser to testify.

9 THE COURT: I think I was correct in that,  
10 in that decision.

11 MR. WALLACH: We have to raise these things.

12 THE COURT: I'll deny your motion. Do you  
13 wish to say something?

14 MR. WALLACH: I read the pre-sentence report  
15 last week and it was thorough and complete. I would  
16 like to point out, Judge, that Mr. Rosenwasser has  
17 been a hard worker all his life, at this stage if  
18 the sentence, your Honor imposes is one of incarceration  
19 I think the results would be devastating. The  
20 man, upon release of his incarceration will be --  
21 he will lose the business he has built up. He employs  
22 some 30 to 40 people who in my mind will definitely  
23 be out of work, Judge, I think the relationship this  
24 man has had with the people that work for him is  
25 attested by the fact that some of these people were

1 prepared to come in and testify on his behalf and say  
2 such good things about him. I think the man has  
3 been a very hard worker all his life and I think if  
4 your Honor finds that you must incarcerate him I think  
5 of necessity Judge he will be in a position where he  
6 will not be able to meet any of the business obliga-  
7 tions he has and they're quite extensive. I think  
8 the business will definitely go down the drain. Upon  
9 release Judge from incarceration a man his age having  
10 to start over would be a monumental task, Judge. I  
11 don't think he would be qualified for anything other  
12 than what he is doing and it's doubtful whether any-  
13 one, Judge will want to employ a man of his age at  
14 such a late stage in life. He will definitely,  
15 Judge, be hit with all these financial difficulties with  
16 the -- his inability to meet them during incarceration.

17 If your Honor feels incarceration is an  
18 absolute must and this man cannot be sentenced in any  
19 other fashion, I ask your Honor consider a weekend  
20 sentence or allow this man to report to work during  
21 the day and run his business and be incarcerated  
22 during the evening hours.

23 THE COURT: Do you want to say anything,  
24 Mr. Rosenwasser?

25 MR. WALLACH: I think the Pre-Sentence Report



1 will bear out the fact, I don't attempt to go beyond --  
2 behind the jury's verdict, this man protested he is  
3 truly a victim here and he is innocent of this crime.  
4 I know, Judge as a result of this he was emotionally  
5 upset, he was under sedation during the trial to  
6 stabilize him somewhat.

7 This has been a traumatic effect both between  
8 the defendant and his family.

9 THE COURT: You wish to say anything, Mr. Levin-  
10 Epstein?

11 MR. LEVIN-EPSTEIN: No, your Honor.

12 THE COURT: You must understand that I have to  
13 accept the jury verdict and Mr. Rosenwasser took the  
14 witness stand and gave the jury his version of the  
15 facts. Apparently they didn't believe him and this  
16 is a serious offense as I'm sure you know.

17 I don't know of any way of stopping this kind  
18 of offense, this kind of offense without some punish-  
19 ment. So, it's judged on Count One of the indictment  
20 that the defendant is hereby committed to the custody  
21 of the Attorney General for the imprisonment of a  
22 term of two years and defendant should become 18 USC  
23 A405. At such time as support of Parole may determine  
24 and defendant shall pay a fine in the United States  
25 in a sum of \$5,000.

1 Now, he has the right to appeal and I assume  
2 he will appeal and there is no financial affidavit  
3 situation here.

4 MR. WALLACH: No.

5 THE COURT: You are going to file a Notice of  
6 Appeal today?

7 MR. WALLACH: Yes.

8 Did you say today, Judge?

9 THE COURT: I will check. No. I have checked,  
10 yes, will you file it today?

11 MR. WALLACH: We'll file it Monday or Tuesday,  
12 we'll file it over the weekend.

13 THE COURT: Do you have the trial minutes?

14 MR. WALLACH: We have most of them, Judge,  
15 I think we need one small motion.

16 Would your Honor consider my prior statement  
17 that if he is to be incarcerated for this period of  
18 time that your Honor consider having him serve that --

19 THE COURT: No.

20 MR. WALLACH: Thank you, Judge. Bail is  
21 continued, Judge?

22 THE COURT: Yes.

23 MR. LEVIN-EPSTEIN: Pending appeal.

24 THE COURT: Yes.

25 (Whereupon, the sentencing was concluded.)

\* \* \*



JUDGMENT AND PROBATION/COMMITMENT ORDER

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

vs.

Docket No. 75 CR 278

SEYMOUR ROSENWASSER,

Defendant.

-----X

In the present of the attorney for the government  
the defendant appeared in person on 5-21-76 with counsel  
Peter Peluso, Esq.

PLEA           GUILTY, and the court being satisfied that  
there is a factual basis for the plea in count 2.

FINDING & JUDGMENT       Defendant has been convicted  
as charged of the offenses of violating T-18, U.S.C. Sec. 371,  
in that on or about and between March 3, 1972 and March 6,  
1972, both dates being approximate and inclusive, the defendant  
did knowingly and wilfully conspire to commit an offense against  
the U.S., in violation of T-18, U.S.C. Sec. 659, by conspiring  
to knowingly and wilfully receive and have in his possession  
a quantity of women's knitted garments having a value in excess  
of \$100.00, which garments had been stolen on or about March

3, 1972, from a motortruck belonging to the Arline Knitwear Co., while moving as an interstate shipment of freight from N.Y to N.J., the defendant knowing them to have been stolen.

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 2 years on count 1 and that the defendant shall become eligible for parole under T-18, U.S.C. Sec. 4205(b)(2) at such time as the Board of Parole may determine and the defendant shall pay a fine to the United States in the sum of \$5,000.00.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probations, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke



probation for a violation occurring during the probation period.

U.S. District Judge - THOMAS C. PLATT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
PROBATION OFFICE

JAMES F. HARAN  
CHIEF PROBATION OFFICER

ROOM 304, U. S. COURT HOUSE  
BROOKLYN 11201  
212-875-8044

June 4, 1976

Mrs. Marilyn Rosenwasser  
5421 Glenwood Road  
Brooklyn, New York

Dear Mrs. Rosenwasser:

The Honorable Thomas C. Platt, United States District Judge, has requested us to acknowledge his receipt of your letter of May 24, 1976, and respond thereto.

A review of the information concerning the offense for which your husband was found guilty reflects the following facts. In March of 1972, three individuals at gun point stole a tractor-trailor truck loaded with \$30,000 worth of women's knitwear garments. This is a very serious offense. Individuals who rob and steal shipments like this could not do so with any hope of making a profit unless other individuals were around who would help them hide the stolen goods and also buy the stolen goods from them. This is where your husband became involved in the offense. There was evidence to indicate that he permitted the stolen garments to be stored at his factory and that he had also agreed to purchase one-third of the garments for approximately \$2,500. It is of very serious concern to the Court that men such as your husband should allow themselves to help and engage in business with such thieves. For this reason the Court imposed a two year sentence. Under the section of the law under which this sentence was imposed your husband would be eligible to be released on parole in approximately one-third of the sentence.

With respect to Allicino, a six month sentence was imposed which he will have to serve in full. This sentence was decided upon by the Court because Allicino has already served a four month sentence on a similar offense committed at just about the same time that he acted as middle-man in the offense involving your husband. When Allicino was arrested on the other offense he was unloading stolen cases of whiskey at your husband's place of business. No charges were placed against your husband for that offense.

It is a regrettable act of life that citizens who have many good qualities frequently get themselves involved in illegal activities. The reasons why they do this, especially in their mature years, are often complex and cannot be easily explained even by themselves. Their families of course are always embarrassed and suffer along with them. The Court always sympathizes with families of the defendants. Nevertheless, the Court has an obligation to the community at large to let it be known that society disapproves of theft and will take steps to try to deter others from stealing or assisting thieves.

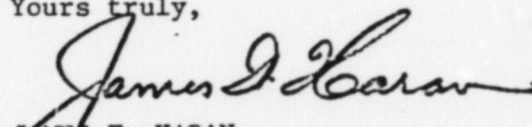


Mrs. Marilyn Rosenwasser  
June 4, 1976

The Court's task is a difficult one to try to balance the interests of the defendants with the interests of the whole community, which disapproves stealing and must attempt to set some standards of honesty for the younger generation. We trust this will give you some insight into the complicated situation set in motion by your husband's illegal activities.

Further we are unable to predict the outcome of your attorney's appeal of the conviction in this case. However, it would certainly be prudent for your husband to plan at this juncture some alternate means of running his business in the event that he does have to serve the jail sentence imposed by the Court.

Yours truly,



JAMES F. HARAN  
Chief U. S. Probation Officer

lb  
cc: Honorable Thomas C. Platt  
U. S. District Judge

NOTICE OF APPEAL

203

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

-against-

SEYMOUR ROSENWASSER,

Docket No. 75 CR 278

HON. THOMAS C. PLATT, JR.

Defendant.

-----X

Notice is hereby given that SEYMOUR ROSENWASSER  
appeals to the United States Court of Appeals for the Second  
Circuit from the Judgment entered in this action on May 21,  
1976.

Date: May 24th, 1976

To:

Clerk, U.S. Court of  
Appeals  
Second Circuit  
Foley Square, N.Y.

PETER J. PELUSO, ESQ.  
Counsel for Appellant  
11 PARK PLACE  
NEW YORK CITY, N.Y. 10007

ARNOLD E. WALLACH, ESQ.  
Of Counsel

U.S. Attorney, Eastern District  
Cedman Plaza, Brooklyn, N.Y.

Service of <sup>Two</sup> three (3) copies of the within  
is admitted this <sup>2nd</sup> day of August 1976

*L. DeMales*

*United States Attorney for the Eastern District*

AUG 2 1 33 PM '76  
EAST. DIST. N.Y.